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THE
HINDU LAW
OF
RELIGIOUS AND CHARITABLE TRUST

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Tagore Law Lectures—1936
(Delivered in August 1951)

THE HINDU LAW OF RELIGIOUS AND CHARITABLE TRUST

BY

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PREFACE.

These lectures on the Hindu Law of Religious and Charitable Trust, were delivered by me, at the invitation of the Calcutta University, as Tagore Law Professor, in August 1951. Though the invitation came to me several years before, it was primarily due to my own pre-occupations that these lectures could not be completed earlier.

So long as feelings of piety and benevolence have an abiding place in human heart, they must find expression in religious and charitable gifts ; and 'law' which is a means to serve social ends, has got to provide for their regulation and control, in order that the object of the donor might be achieved. This is how religious and charitable trust came into existence in almost all systems of civilized law ; and although the legal forms which are employed as means to carry out the social objectives are by no means uniform, there is little diversity regarding the end itself. In English Law there is something technical in the conception of 'trust' which had its origin in a dual system of law and a dual system of ownership which came into existence in England under peculiar historical and political conditions. The trust property, in English law, vests in the trustee, who holds it for the benefit of certain persons or for the fulfilment of certain purposes, and the beneficiaries are regarded as having, what is called, an equitable estate or interest in the subject matter of the trust. It is however neither a necessary nor even a material ingredient in the jural conception of trust that there should be two kinds of property or interest or that the subject matter of the trust should legally vest in the trustee. In a religious or charitable trust, where there are definite or ascertained persons for whose benefit the trust is created, there is nothing wrong in regarding the beneficiaries as owners of the trust property. On the other hand, if, as usually happens, the beneficiaries are an indeterminate body of persons or the trust is for the accomplishment of a particular religious or charitable purpose, the endowment or the foundation itself can be given the status of a Juristic person capable of bearing legal rights and duties, and the trust property can vest in law in such artificial person. In either case the managers or administrators of the endowment would be trustees in the proper sense of the expression and would be legally burdened with the obligation to carry out the trust, in accordance with the direc-

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tions of the founder. This was the conception of the Roman Lawyers, and except where a trust is created in modern times on the English model, the Hindu Law is very similar to the Roman Law in this respect. In Hindu Law, an idol which is the symbol of a religious purpose can hold property as a legal person, and so can an institution like a muth or choultry. The shebait, the mohunt or the manager, as the case may be, though he has not the legal estate in the English sense, does occupy the position of a trustee and is clothed with rights and duties not much dissimilar to those of a trustee under the English law.

To the formulation of rules regulating religious and charitable trust, the Hindu Smriti writers paid little or no attention, and except certain cryptic texts which deal more with ceremonials than with law proper the original authorities on this branch of law are practically nil. The law that is applied by our courts to-day in dealing with religious and charitable trusts of the Hindus is to a large extent Judge-made law, which is based on the principles of equity law in England and the customs and usages of our country. There have been a few legislative enactments also, making provisions for enforcement of religious and charitable trust of a public character, and they seem to be modelled on similar statutes in England. The importing of the principles of English law has undoubtedly been of great assistance in the development of law on the subject, though it can not be denied that to a certain extent it has introduced an amount of complexity and artificiality in our system. Moreover a law based upon judicial precedents, which is still growing, cannot possibly be consistent or uniform in all respects. What I have attempted to do in these lectures is to discuss the basic principles that lie at the root of the different rules of law as they have been formulated and shaped by judicial pronouncements, and have compared them whenever possible with similar rules in the English and the Roman systems of law. It is from the standpoint of these principles that I have endeavoured to make a critical study of the existing case laws on the subject. There have been two previous Tagore Law lectures practically on the same subject. The first one which is associated with the name of Pandit Prana Nath Saraswati was published more than half a century before, and though a most erudite work is of little practical value to lawyers at the present day. It sets out almost all the relevant Smriti texts on the subject, and I have attempted in my own way to appraise their juridical value from the standpoint of modern jurisprudence. The Tagore Law

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Lecture of Sri Jogendra Chandra Ghosh is a comparatively recent work, and contains many valuable suggestions which have been of great assistance to me. These lectures of mine are primarily based upon judicial decisions both English and Indian, and all that I have attempted to do, is to analyse, marshall and arrange them properly from the standpoint of those abiding principles which underlie legal systems.

It has been stated in the first lecture that on the subject of Hindu Religious Endowments the latest provincial legislation is the Orissa Act of 1939. The Madras Act of 1951 however came out when these papers were in the press and both the Orissa and the Madras Acts have been set out in the appendices.

I must express my gratitude to Sri Sachindra Chandra Das Gupta, M.Sc., LL.B., and Sri Arun Kumar Dutt, LL.B., Advocates, for preparing the index of this book with great care and attention. My thanks are also due to Sri Nagendra Mohan Saha, M.Sc., LL.B., and Sri Amiya Kumar Mukerji, LL.B., Advocates, for the pains they took in drawing up the table of cases. But for the assistance thus received the book could not have been completed and published so quickly.

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TABLE OF CASES

A

NAMES	PAGES
A. G. *v.* Brown—(1818) 1 Swan, 265	392
A. G. *v.* Copper's Co. 19 Ves. 187	125
A. G. *v.* Hankey—16 Eq. 140 (Note)	125
A. G. *v.* Vint—3 De. G. & Sm. 704	125
Abdul *v.* Cassum—36 Bom. 168	440
Abdul Alim *v.* Abir Jan 55 Cal. 1284	424, 446
Abdul Gofur *v.* Umakanta 19 C.W.N. 260	255
Abdul Hakim *v.* Buramiddin 49 Mad. 580	456
Abdul Halim *v.* Musst. Nasifunnessa 44 C.W.N. 969 ..	422
Abdur Rahim *v.* Md. Barkat Ali 55 I.A. 96 ; 32 C.W.N. 482 ; 55 Cal. 519	429, 430, 434, 435, 458
Abhiram *v.* Shama Charan—36 Cal. 1003, 36 I.A. 148 ..	175, 278, 280, 287
Achutanand Das *v.* Jagannath Das 20 C.W.N. 122 ..	346, 350
Adams *v.* Adams 2 Cowper 651	132
Administrator-General of Bengal *v.* Hughes 40 Cal. 192 ..	140
Do Do *v.* Balkissen—51 Cal. 953 ..	267
Advocate-General *v.* Damothar—Perry's Oriental Cases 526	115, 122
Advocate-General *v.* Strangman 6 Bom. L.R. 56 ..	76
Advocate-General of Bengal *v.* Belchambers 36 Cal. 261 ..	81, 129
Advocate-General of Bengal *v.* Capt. S. Webb Johnston 39 39 C.W.N. 793	130
Advocate-General of Bombay *v.* Fardoonji Ardeshir 13 Bom. L.R. 332	130
Ajit Kumar Mitra *v.* Tarubala 63 Cal. 209	140
Akhil Chandra *v.* Rebati Raman 14 C.L.J. 618 ..	181
Alangamanjari *v.* Sonamani 8 Cal. 157, 637	138
Alí Begum *v.* Badr-ul-Islam A.I.R. (1938) P.C. 184 ..	440
All India Spinners Association of Mirzapore *v.* The Commissioner of Income Tax, Bombay Presidency, 49 C.P.N. 1 ; I.L.R. 1945 Bom. 153	84
Amar Das *v.* Haramanbhai A.I.R. 1942 Bom. 291 ..	440
Ambala Vana *v.* Sree Minakshy 28 Mad. L.J. 217 ..	195
Amritalal *v.* Swarnamoyee 24 Cal. 589 ; 25 Cal. 662 ; 27 I.A. 128	142, 143, 144
Anadi Lal *v.* Jagannath 9 Pat. L.T. 214	370
Ananda Chandra *v.* Brojolal 50 Cal. 292 ; 30 C.L.J. 356 ..	198, 211
Anandamoyi *v.* Boykuntha 8 W.R. 198	242
Anantha *v.* Naga Mathu 4 Mad. 200	140
Andrews *v.* Joakim 2 B.L.R.O.C. 148	67
Angur Bala *v.* Debabrata A.I.R. (1951) S.C. 293 ..	217
Anjaneya Sastri *v.* Kothandapani A.I.R. 1936 Mad. 449 ..	428
Anjuman Islamia of Muthra *v.* Nasiruddin 28 All. 384 ..	65
Annada Charan Dutt *v.* Kamala Sundari A.I.R. 1936 Cal. 406	181
Annoji *v.* Narayan 21 Bom. 556	386, 445, 454
Annasami Pillay *v.* Ram Krishna 24 Mad. 219	313

UNIVERSITY OF CALCUTTA
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NAMES	PAGES
Annaya Tantri *v.* Ammakka 41 Mad. 886 (F.B.) ..	220, 221
Anuragi *v.* Parmanand A.I.R. (1939) Pat. 1	220
Appa Rao *v.* Vignesam—A.I.R. (1937) Mad. 118 ..	365
Appanna *v.* Narasinga—45 Mad. 113 (F.B.)	433, 443
Arrath Misser *v.* Juggarnath 18 W.R. 439	285
Arunachalam *v.* Venkatachelapathi 46 I.A. 204 ..	343, 362, 364
Ashutosh Dutt *v.* Durga Charan—6 I.A. 182	140, 177, 179
Ashutosh Seal *v.* Binode Behary—34 C.W.N. 177 ..	213, 216
Asita Mohan *v.* Nirode Mohan—20 C.W.N. 901	166
Assam Raghuvala *v.* Pellati—27 Mad. L.J. 266 ; 25 I.C. 794	426
Attorney General *v.* Bishop of Chester 1 Bro. C.C. 444 ..	124
Attorney General *v.* Brown—(1818) 1 Swanston 265 ..	465
Attorney General *v.* City of Exeter—2 Russ 45 ..	449
Attorney General *v.* Dixie—13 Ves 519	451
Attorney General *v.* Duke of Northemberland (1877) 7 Ch. D. 745	113
Attorney General *v.* Herrick—(1772) Amb. 712 ..	112
Attorney General *v.* Lewes—(1849) 8 Ha. 32	135
Attorney General *v.* Mayor of Exeter—2 Russ 362 ..	450
Attorney General *v.* Newbary—3 My & K. 647 ..	451
Attorney General *v.* Pretyman—4 Beav. 462	451
Attorney General *v.* St. Cross Hospital—17 Beav. 435 ..	402
Audesh Singh *v.* Commissioners of Lucknow & Ors. A.I.R. (1934) Oudh 329	132
Ayancheri *v.* Acholathil—5 Mad. 89	229

B

Babaji Rao *v.* Laxmandas—28 Bom. 215	339, 366, 367
Badridas *v.* Choonilal—33 Cal. 789	313
Bai Bapi *v.* Jamnadas—22 Bom. 774	118
Bai Chandan Bai *v.* Dady Nusserwanji—26 Bom. 632 ..	119
Bai Mativahu *v.* Bai Mamubai—21 Bom. 709, 24 I.A. 93 ..	163
Baidyanath Prosad *v.* Kunja Kumar A.I.R. (1949) Pat. 75 ..	282
Baird's Trustees *v.* Lord Advocate 15 Sess Cas. 4th Ser. 682	53
Baker v. Sutton—1 Keen 224	112
Balaswami *v.* Venkataswami—40 Mad. 745	378
Baldeo *v.* Arya Pritinidhi—I.L.R. 52 All. 789	335
Balmukund *v.* Nanakchand—A.I.R. (1929) All. 433 ..	444
Baneswar *v.* Anath—A.I.R. (1951) Cal. 490	235
Banga Chandra *v.* Jagatkishore—43 I.A. 249	300
Bankey Lal *v.* Peare Lal—53 All. 710	167
Bansilal *v.* Govind Lal—34 Bom. L.R. 733	159
Bapugonda *v.* Vinayak—A.I.R. (1941) Bom. 317 ..	448
Barnes *v.* Addy—L.R. 9 Ch. Appeal 244	417
Basudeo Roy *v.* Mohunt Jugal Kishore—22 C.W.N. 841, A.I.R. (1918) P.C. 37	302, 414
Bawa Magneeram *v.* Kasturbhai—49 I.A. 54	299, 300, 383
Bechulal *v.* Oliullah—11 Cal. 538	254
Bedford Charity, In re—2 Swan 518	436
Beharilal *v.* Md. Muttaki—20 All. 482	303
Bennet, In re—(1930) 1 Ch. 305	112
Bhabani Charan *v.* Suchitra—51 C.L.J. 25	289

CENTRAL LIBRARY

NAMES	PAGES
Bhabatarini *v.* Ashalata—70 I.A. 57 ; (1943) 2 Cal. 137	201, 203, 206, 207
Bhagabatty *v.* Guruprosonna—25 Cal. 112.	71, 99, 103, 139, 161, 176, 337
Bhagawan *v.* Narayan—A.I.R. (1946) Pat. 27	241, 313
Bhagawan Das *v.* Raghunandan—22 I.A. 94	353
Bhagawan Dín *v.* Gir Harsaroop—44 C.W.N. 294 ..	418, 419
Bhagawan Din *v.* Gir Harsaroop—44 C.W.N. 294 ..	418, 419
Bhekdhari Singh *v.* Sri Ram Chandraji—10 Pat. 388 ..	105, 183
Bhoopatinath *v.* Basanta—62 Cal. 1098 ; 40 C.W.N. 1320 ..	102
Bhuban *v.* Narendra—35 C.W.N. 478	315
Bhupati *v.* Ramlal—10 C.L.J. 355 ; 37 Cal. 128 (F.B.)	41, 44, 45, 72, 117, 139, 154, 164, 166
Bhurruck *v.* Golam—10 W.R. 458	461
Bhyah Ram Singh *v.* Bhyah Ugersingh—13 M.I.A. 373 ..	49
Bidhusekhar Banerji *v.* Kulada Prosad Dighoria 46 Cal. 877	183
Biddiya Sundari *v.* Durganand—22 W.R. 97	461, 464
Bimal Chandra *v.* Gunendra—41 C.W.N. 728	271, 464
Binode Behary *v.* Manmatha—21 C.L.J. 42	172
Birendra Kishore *v.* Akram Ali—39 Cal. 439	78
Birkett, In re, 9 Ch. D. 576	109
Biseswar Das *v.* Sasthi—A.I.R. (1943) Pat. 289 ..	380
Bishambhar Das *v.* Mst. Phulgari—11 Lah. 673 ..	354
Blair *v.* Duncan—(1902) A.C. 37	112
Blundell's Trust, In re (1861) 30 Beav 36	57
Bonar Law Memorial Trust *v.* Commissioners of Inland Revenue	63
Bonnerji *v.* Sitanath—49 I.A. 46	274
Bourne v. Keane—(1919) A.C. 815	58, 68
Bowen, In re—(1893) 2 Ch. 491	135
Bowman *v.* Secular Society Ltd. (1917) A.C. 406 ..	59, 62
Bramamayi *v.* Joges—8 B.L.R. 400	142
Brham Deo *v.* Ramanand—A.I.R. (1933) Pat. 70 ..	357
Brice *v.* Stokes—2 W. & T. 633	247
Brijlal *v.* Naraindas—14 Lah. 827	117, 118, 121
Bristow *v.* Bristow—(1842) 5 Beav. 289	56
Brojendra *v.* Lalit—45 C.L.J. 41	213
Brojo Soondary *v.* Ranee Lachmee—11 W.R. 13 ; affirmed by P.C. in 20 W.R. 95	172
Brudenell *v.* Elwes—(1801) 1 East. 442 ; 7 Ves. 382 ..	132
Buckerridge *v.* Glasse—(1840-41) Cr & Ph 126 ; 10 L.J. Ch. 134 ; 5 Jur. 163	445
Budh Singh *v.* Nirode—2 C.L.J. 431	173, 411, 424, 425, 426
Budreedas *v.* Choonilal—33 Cal. 789	410, 414, 415, 424, 425, 432, 435
Burabani Coal Co. *v.* Gokulanand—61 I.A. 35	254

C

C. N. Eralappa *v.* Balakrishna—53 Mad. L.J. 183 ; 102 I.C. 74	427
Cadell *v.* Palmer—(1833) 1 Cl. & F. 372	134
Cally Nath *v.* Chandra—8 Cal. 378	142
Campden Charities, In re 18 Ch. D. 310	126
Carr. *v.* Bedford—2 Rep. Ch. 77	56
Caus, In re, Lindeboom, *v.* Camille—(1934) 1 Ch. 162 ..	58, 68

CENTRAL LIBRARY

NAMES	PAGES
Chamberlayne *v.* Brochett—(1812) L.R. 8 Ch. 206 ..	127, 135
Chandicharan *v.* Dulal—30 C.W.N. 930 ; 54 Cal. 30 ..	172, 194, 209
Chandicharan *v.* Haribole—46 Cal. 951	166
Chandra Choor *v.* Bibhuti Bhusan—A.I.R. (1945) Pat. 261 ..	211
Chandra Mohan Ganguly *v.* Jnanendra—27 C.W.N. 1033 ..	79, 80
Chandra Prosad *v.* Jinabharati—55 Bom. 414 ..	456
Chandulal *v.* Rampat—A.I.R. (1933) Lah. 189	104
Chaturbhuj *v.* Chatrajit—33 All. 253	166
Chhaganlal *v.* Sobharam—35 Bom. L.R. 1119 ; A.I.R. (1934) Bom. 26.	435
Chhotay Lal *v.* Gopaljee—A.I.R. (1940) All. 252 ..	211
Chintamani Bajaj *v.* Dhondo Ganesh—15 Bom. 612	189, 316, 418, 437, 444
Chockolingam Pillay *v.* Mayandi—19 Mad. 485	300
Chotalal *v.* Monohar—26 I.A. 199	449
Christ's Hospital *v.* Grainger—1 Mac. & G. 460 ..	135
Churaman *v.* Gopi—37 Cal. 1	96
Clarke. Re, Bracey *v.* Royal National Life Boat Institution (1923) 2 Ch. 407	109
Cocks *v.* Manners 12 Eq. 574	59
Collector of Masulipattam *v.* Cavaly Vencata 8 M.I.A. 529 ..	90
Collector of Moorshidabad *v.* Ranee Shebessurree 18 W.R. 226 (P.C.)	118
Collector of Poona *v.* Bai Chand Bai—35 Bom. 470 ..	428
Collector of Thana *v.* Hari Sitaram 6 Bom. 546	279
Commissioners for Special Puruoses of Income Tax *v.* Pemsel (1891) A.C. 531	41, 53, 54
Commissioners of Charitable Donations *v.* De Clifford 1 Dr. & W. 245	135
Corlyn *v.* French—4 ves. 418	124

D

Dabo Misser *v.* Srinibash 5 B.L.R. 617	230
Dakshina Mohan *v.* Sarada—20 I.A. 160	313
Damodar Das *v.* Lakshan Das—37 I.A. 147	258, 280, 296, 306
Damodar Das *v.* Uttamram—17 Bom. 271	246
Das Merces *v.* Cones—(1864) 2 Hyde 65	67
Dasami Sahu *v.* Param Shameswar—57 All. 621 ..	106
Dashan Lal *v.* Shibji Maharaj—45 All. 215	269
Dattagiri *v.* Dattatraya—27 Bom. 363 ; 4 Bom. L.R. 743 ..	303, 368
Dattatraya Govinda Holdanlar, In re. 56 Bom. 519 ..	302, 303
Davidson, In re—(1909) 1 Ch. 567	112
Dayamoyi *v.* Sankar Nath—42 C.L.J. 30	212
Delrus Banoo *v.* Nawab Syed Asgar Ally Khan 15 B.L.R. 167	189
Deo Saran *v.* Deoki—3 Pat. 842	103
Deputy Commissioner of Kheri *v.* Khanjan Singh 34 I.A. 72	299
Dev Sankar *v.* Motiram—18 Bom. 136	118
Devasikamony *v.* Palaniappa—34 Mad. 535	279, 283
Devi Ramanujacharyulu C. Alapati A.I.R. (1927) Mad. 1033	444
Dhancoober Bai *v.* Advocate General 1 Bom. L.R. 743 ..	354
Dharampuran *v.* Virapandiyam I.L.R. 22 Mad. 302 ..	321, 336
Dharmadas *v.* Gostha Behary—16 C.W.N. 29	195
Dhundiraj *v.* Ganesh—18 Bom. 721	418

CENTRAL LIBRARY

NAMES	PAGES
Dinshaw *v.* Jamshetji—33 Bom. 529	435
Doogarsen *v.* Tir Bhawan—I.L.R. (1947) All. 263 ..	267
Doorga Nath *v.* Ram Chandra—4 I.A. 52 ; 2 Cal. 341	172, 175, 192, 193,
..p5 a 9, 8 ..	194, 236, 237, 287, 299
Doorga Pershad *v.* Sheo Pershad—7 C.L.R. 278 ..	157, 163
Douglas, In re—35 Ch. D. 472	60
Draivasundaram *v.* Subrahmania—I.L.R. (1945) Mad. 854 ..	72
Dupree's Trust, In re—(1945) L.J. Ch. 1	64
Dwarka Nath Bysack *v.* Burroda Prosad Bysack 4 Cal. 443 ..	73, 74

E

Eyre *v.* Countess of Shaftsbury—(1724) 2 P.W.M. 103 ..	392

F

Faizunnessa *v.* Moulavi Asad—41 C.W.N. 298 ..	425, 448, 451, 458
Farhall *v.* Farhall—7 Ch. A. 123 — — —	372
Fatima Bibi *v.* The Advocate-General of Bombay 6 Bom. 42	67 83
Fleetwood, In re—(1880) 15 Ch. D. 594	57
Faveaux, In re—(1895) 2 Ch. 501	60
Fox *v.* Macreth—2 White & Tador Leading Cases 709 ..	311
Freeman *v.* Pope L.R. 5 Ch. App. 538	

G

Gadicharilla *v.* Nayyapatti—36 Mad. 300	120
Gajapati *v.* Bhagban—I.L.R. 15 Mad. 44	461
Ganapati *v.* Savithri Ammal—21 Mad. 10	411, 445, 461
Ganesh Chandra *v.* Lal Behary—63 I.A. 448, 41 C.W.N. 1 ..	201, 203, 204
Ganesh Gir *v.* Omrao Gir—1 S.D.A. 291 ; 6 Ind. Dec. O.S. 214	347
Ganga Narain *v.* Brindaban—3 W.R. 142	104, 168, 170
Gangi Reddi *v.* Tammi Reddi—54 I.A. 136	90, 101
Gauranga Sahu *v.* Sudevi—I.L.R. 40 Mad. 612	461
Gandapuri *v.* Chatarpuri—13 I.A. 100	345, 346, 349
Ghazaffar Hussain *v.* Yawar Hussain—28 ALL. 112 ..	426
Gilmour *v.* Coats—1949 A.E.R. 848 H.L.; (1949) A.C. 426 ..	58
Girijanand *v.* Sailajananda—I.L.R. 23 Cal. 645 ..	2, 167, 250
Girish *v.* Upendra—35 C.W.N. 768	263, 315, 462
Giyana Sambandha *v.* Kanduswami—10 Mad. 375	29, 325, 326, 332, 338, 340
Gnanasambanda *v.* Velu Pandaram—27 I.A. 69	202, 280, 296, 306, 368, 380
Gobinda Chandra *v.* Abdul Majid—48 C.W.N. 225 ..	417, 425, 441
Gobinda Kumar *v.* Debendra Kumar Roy—12 C.W.N. 98 ..	173, 194, 233
Gobinda Ramanuj *v.* Ramcharan—52 Cal. 748	360
Gobinda Ramanuj *v.* Mohunt Ramcharan 63 Cal. 326	339, 352, 359, 361, 362
Gobordhan Bysack *v.* Shyam Chand—Bourke 282 ..	136
Godrey *v.* Pool—13 A.C. 497	149
Gokoolnath *v.* Iswar Lochan—14 Cal. 222	72, 108, 118, 122
Golam Mowlah *v.* Mollah Ali Hafiz—28 C.L.J. 4 ..	425
Golan *v.* Macdermot—(1868) L.R. 5 Eq. 60	112

CENTRAL LIBRARY

NAMES	PAGES
Gopal *v.* Kanoo—26 ALL. 162	440
Gopal Chand *v.* Babu Kumar—5 S.D.A. 24 ..	89
Gopal Dutt *v.* Baburam (1936) A.L.J.R. 515	271
Gopal Lal Sett *v.* Purna Chandra Bysack 49 I.A. 100	184, 413, 464, 466
Gopal Jiew *v.* Baldeo—51 C.W.N. 383	268
Gorachand *v.* Makhanlal—6 C.L.J. 404	273, 370
Gordhan Das *v.* Chunilal—30 ALL. 111	114
Gossamee Sree Greedharijee *v.* Ruman Lalji—16 I.A. 137	156, 201, 214, 219
Gossami Doulat Gir *v.* Bissesswar Gir—19 W.R. 215 ..	328, 357
Gossami Ramdhan Puri *v.* Dalmir Puri—14 C.W.N. 191 ..	331, 358
Gouri Kumari *v.* Indra Kumar—50 Cal. 197	208, 209
Gouri Sankar *v.* Naider—18 C.W.N. 59	335
Govinda *v.* Lakshmi—43 ALL 515	96
Greedharee Doss *v.* Nundo Kishore—11 M.I.A. 405 ..	344, 345, 350
Grimond *v.* Grimond—1905 A.C. 124	111
Grove Grady, In re—(1929) 1 Ch. 557	61
Gulzarilal *v.* Collector of Etah—35 C.W.N. 699 ..	316
H	
Hadden, Re Public Trustee *v.* More—(1932) 1 Ch. 133 ..	64
Hallet's Trust, In re, Kwatchbul *v.* Hallet—13 Ch. D. 636 ..	312
Hari *v.* Antaji—44 Bom. 466	247
Haridas Haldar *v.* Charu Chandra—37 C.W.N. 978 ..	241
Haridassi Debi *v.* Secretary of States for India 5 Cal. 228 (Affirmed by P.C. in 7 Cal. 304)	81
Harikishan *v.* Raghubar Dayal—A.I.R. (1926) Oudh 578 ..	187
Haripada *v.* Elokeshi—A.I.R. (1940) Cal. 254	271
Harish Chandra *v.* Atir Mohammad—I.L.R. 40 Cal. 545 ..	321, 336
Harish Chandra *v.* Hindu Dharam Sevak Mondal—58 All. 687	133
Harmitra *v.* Raghubar—3 Luck 645	94
Heath *v.* Chapman—(1854) 2 Drew. 417	57, 111
Hemanta Kumari *v.* Gouri Sankar—I.L.R. 1941 All. 401 P.C.	184
Hemanta Kumari *v.* Sri Sri Iswar Sridhar Jew—50 C.W.N. 629	280, 297, 306
Hewitt's Estate, re—53 L.J. Ch. 132	111
Holland, Re. Gregg *v.* Holland—(1902) 2 Ch. 360 ..	149
Hormusji Framji Warden, In the matter of 32 Bom. 214 ..	131
Hossein Ali Khan *v.* Mohanta Bhagwan Das—I.L.R. 34 Cal. 249	273, 282
Hummeltenberg, In re—(1923) 1 Ch. 237	55, 64, 84
Hunooman Prashad *v.* Mussammat Babooee—6 M.I.A. 390	277, 278, 291, 299, 375
Huseni Begum *v.* Collector, Moradabad—20 All. 46 ..	441
I	
I. E. Aboo *v.* G. H. S. Aboo—A.I.R. (1939) Rangoon 254 ..	423
Indu Bhusan *v.* Kiran Chandra—A.I.R. (1940) Cal. 376; 44 C.W.N. 327	435
Inland Revenue Commissioner *v.* Temperance Council on Christian Churches—(1926) 42 T.L.R. 618	64
Ironmongers Co. *v.* A. G.—10 Cl. & F. 906	125, 127
Issur Radhakanta *v.* Khettra Ghosh—A.I.R. (1949) Cal. 253	227

CENTRAL LIBRARY

J

NAMES	PAGES
Jado Singh *v.* Nathu Singh—48 All. 592	282
Jadunath *v.* Thakur Sitaramji—44 I.A. 187	171, 176, 248
Jaffar Khan *v.* Daud Saha—13 Bom. L.R. 49	424
Jagadindra Nath Roy *v.* Rani Hemantakumari Debi 31 I.A. 203	182, 259, 260, 270, 368
Jagannath *v.* Krishna Prosad—7 W.R. 266	230
Jagannath *v.* Ranjit Singh—25 Cal. 354	227
Jagannath *v.* Seenu—42 Mad. 618	198
Jagat Kishore *v.* Lakshman Das—23 Bom. 659 ..	187
Jaidayal *v.* Dewan Ram—I.L.R. 1938 Lahore 704 ..	104
Jairam *v.* Kuverbai—9 Bom. 491	138
Jambulinga *v.* Akilanda—A.I.R. (1927) Mad. 886 ..	431
James Powell, In the goods of—(1873) 6 N.W.P. 55, 6 All. H.C.R. 54	445
Jamnabai *v.* Khimji—14 Bom. 1	76, 78, 108
Jamshedji Cursetji *v.* Soonabai—33 Bom. 122 ..	69
Jan Ali *v.* Ramnath—8 Cal. 32	436
Janakee *v.* Gopal—2 Cal. 365 ; 10 I.A. 32	218
Janaki Bai *v.* Shri Tiruchitrambara—58 Mad. 988 (F.B.) ..	434
Jarman, re,—(1878) 8 Ch. D. 584	112
Jodhi Rai v. Basdeo—33 All. 375 (F.B.)	260
Jogesh Chandra *v.* Dhakeswari—45 C.W.N. 809 ..	240
Jones *v.* Administrator General of Bengal—46 Cal. 485 ..	141
Joseph Colgan, The Most Reverned *v.* Administrator-General of Madras 15 Mad. 424	68
Joseph Ezekiel Judah *v.* Aron Hye—5 B.L.R.O.C.J. 433 ..	68
Jnanaranjan Banerji *v.* Adoremoney—13 C.W.N. 805 ..	289
Jnanendra *v.* Surendra—24 C.W.N. 1026	252
Joygunnessa *v.* Majilullah—A.I.R. (1924) Cal. 1024 ; 28 C.W.N. 781	445
Jugal Kishore *v.* Lakshmandas—23 Bom. 659	76, 421
Juggeswar *v.* Rajah Rudranarain—12 W.R. 299 ..	286
Juggat Mohiny *v.* Sokhimony—14 M.I.A. 289 ..	71, 139, 168
Juggatsoondery *v.* Manickchand—(1857) 1 Boulnois 266 ..	136
Juro Ram Das *v.* Govinda Deb—12 C.L.J. 49 ..	388
Jwala Das *v.* Pir—A.I.R. (1930) P.C. 245	358

K

Kahandas Narandas, In re.—5 Bom. 154	49
Kailasam Pillai *v.* Nataraja—33 Mad. 205 (F.B.) ..	341, 364
Kalayana *v.* Kasturi—20 M.L.J. 490	250
Kali Charan *v.* Bangshi Mohan—6 B.L.R. 727 ..	230
Kali Churan *v.* Golabi—2 C.L.R. 128	411
Kali Das Jiram *v.* Grov Parjaram—15 Bom. 309 ..	186
Kali Kanta Chatterjee *v.* Surendranath—41 C.L.J. 128 ..	159
Kali Krishna *v.* Makhan Lal—50 Cal. 233	198
Kali Prosanna Mittra *v.* Gopeenath—17 C.L.R. 241 ..	108
Kamkhaya Vasaka *v.* Balgopal—29 Mad. 553 ..	273
Kandarpa *v.* Jogendra—12 C.L.J. 391	119
Kanhiya Lal *v.* Hamid Ali—60 I.A. 263	267
Karagga *v.* Devappa—26 I.C. 442	289

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

NAMES	PAGES
Karatoli *v.* Unni—26 Mad. 649	255
Kashiswaree *v.* Krishnakamini—2 Hay 557	104
Kasibasi *v.* Chitumbernath—20 W.R. 217 (P.C.) ..	338
Kedarnath Dutt *v.* Atul Kristo Ghosh—12 C.W.N. 1083 ..	75
Kelly *v.* Att. General—(1917) Ir. R. 183	110
Kendall *v.* Granger—(1842) 5 Beav. 300	111
Khetra Chandra Ghosh *v.* Haridas—17 Cal. 557 ..	234, 236
Khub Lal v. Ajodhya Misir—43 Cal. 574	72, 92, 94, 96
Knight *v.* Knight—(1840) 3 Beav. 148	97
Kondal Row *v.* Swamulavara—40 I.C. 535	331
Kokileswari *v.* Mohunt Rudranand—5 C.L.J. 527 ..	254
Konwar Doorga Nath *v.* Ram Chandra—4 I.A. 52 ; 2 Cal. 341	172, 175, 192, 193, 194, 236, 237, 277, 287, 299
Kripa Singh *v.* Ajaipal—11 Lah. 142	438
Krishna Giri *v.* Shridhar Kavalekar—46 Bom. 655 ..	353
Krishna Ramani *v.* Ananda—4 B.L.R. 231	163
Krista Chandra *v.* Ratan—20 C.W.N. 643	282
Kristomurti *v.* Lingaya—A.I.R. (1936) Mad. 677 ..	96
Kulada Prosad Deghoria *v.* Kali Das Naik—42 Cal. 536 ..	182
Kumar Ashima Kristo Deb *v.* Kumar Kumar Kristo Deb 2 B.L.R.O.C. 11	136, 139, 142
Kumaraswami *v.* Lakshamana—53 Mad. 608	251
Kumudban Mohunt *v.* Tripura—35 C.L.J. 188 ..	358
Kunhan *v.* Moorthi—34 Mad. 406	256
Kunjamani *v.* Nikunja—22 C.L.J. 404	205, 207
Kuppa Gurakal *v.* Dorasami 6 Mad. 76	232

L

Lacey, Ex parte—6 Ves. 625	310
Lachman Prasad *v.* Munia 47 All. 867	426
Lahar Puri *v.* Puran Nath 42 I.A. 115 ; 19 C.W.N. 718, 37 All. 298	345, 356
Lakhinarain *v.* Gosta—41 C.W.N. 759	72
Lakhinarain *v.* Dasu—11 Mad. 288	96
Lakshmana Swami *v.* Rangamma—26 Mad. 31	229
Lakshmi Sankar *v.* Baijnath 6 Bom. 24	74
Lakshmindra Tirtha Swamiar *v.* K. Raghavendra Rao 43 Mad. 795	372, 373
Lala Manmohan *v.* Janki Prosad—49 C.W.N. 195 ..	253
Lalit Mohan *v.* Brojendra—53 Cal. 251	211, 212, 214
Langham *v.* Peterson—(1903) 87 L.T. 744	112
Laxman Rao *v.* Gobind Rao A.I.R. (1950) Nag. 217 ..	189, 414
Letterstedt *v.* Broers—(1884) 9 A.C. 371	444
Lewis *v.* Hillman—(1852) 3 H.L.C. 607	312
Lilabati *v.* Bishnu Chobey—6 C.L.J. 621	273
Limji Nowroji Banaji *v.* Bapuji—11 Bom. 441	68
Lokenath *v.* Abani—A.I.R. (1941) Cal. 68	413, 444
Lutifunnessa *v.* Naziran—11 Cal. 33	409

M

Macduff, Re—(1896) 2 Ch. 451	111

CENTRAL LIBRARY

NAMES	PAGES
Madan Mohan *v.* Rakhal—57 Cal. 570	96
Madhab Chandra *v.* Srimati Rani Sarat Kumari—15 C.W.N. 126	105, 168, 170, 173
Madho Das *v.* Kanto Das—1 All. 539	346
Magistrate of Dundee *v.* Morris (1858) 3 Macq. 134 ..	108
Mahabir Das *v.* Jamuna—8 Pat. 48	301, 374
Mahadeo Prasad *v.* Karia Bharati—62 I.A. 47; 39 C.W.N. 433	271, 296, 305, 369
Mahamaya *v.* Haridas—42 Cal. 455	222, 234, 239
Maharaja Srish Chandra *v.* Rakhalanandan 45 C.W.N. 35 (P.C.); (1941) 1 Cal. 468	175
Maharaja Jagadindra *v.* Rani Hemanta Kumari—31 I.A. 203	182, 259, 260, 270, 368
Maharanee Indrajit *v.* Chundeman—16 W.R. 99 ..	198
Maharanee Shibesswari *v.* Mathoora Nath—13 M.I.A. 270	278, 285, 289, 304
Mahomed Ally *v.* Akberally—38 C.W.N. 452 (P.C.) ..	453
Mahomed Athar *v.* Ramjan—34 Cal. 587	189
Mahomed Ismail Ariff *v.* Ahmed Molla—43 I.A. 127; 26 C.W.N. 1118	447, 453
Mahomed Khan, Sahib *v.* Kadar—A.I.R. (1926) Mad. 466; 92 I.C. 950	439
Mahomed Shafiq *v.* Md. Mujtaba—51 All. 30	435
Mahomed Waheb *v.* Abbas Hussain—A.I.R. 1923 Pat 420; 71 I.C. 280	457
Malchus *v.* Broughton—11 Cal. 591; 13 Cal. 193 ..	129
Mallan *v.* Purusottama—12 Mad. 287	227
Mallick *v.* Mallick—52 I.A. 245	266, 267, 270
Mallika Dasi v. Ratanmani—1 C.W. N. 493	230
Manadananda *v.* Tarakananda—37 C.L.J. 281	455
Mancharan *v.* Pransankar—6 Bom. 298	231, 234, 237, 238
Manikka Vasaka *v.* Balagopala Krishna—29 Mad. 553 ..	370
Manmohan *v.* Janki Prosad—49 C.W.N. 195	253
Manohar Ganesh *v.* Lakshmiram—12 Bom. 247 ..	34, 36, 42, 100, 160, 249, 338, 383, 396, 414, 437
Marianbai *v.* Fatimabai—31 Bom. L.R. 135	118
Martin *v.* Marghan—14 Sim. 230	125, 142
Maruti Ram Rao *v.* Mallapur Sri Gopala Krishna 34 Bom. L.R. 415	103
Masjid Sahidgunj *v.* Shiromoni Gurdwara—67 I.A. 251 ..	261
Massirat Hossain *v.* Hossain Ahmed—42 C.W.N. 345 ..	422, 425
Matam Nadipudi *v.* Board of Commissioners for Hindu Religious Endowment, Madras—A.I.R. (1938) Mad. 810 ..	389
Mathura Nath *v.* Lakhi Narain—50 Cal. 426	203
Mathuswami Pillai *v.* Doraswami Pillai—11 M.L.J. 310 ..	90
Mayor of Lyons *v.* A. G. of Bengal—1 Cal. 303 (P.C.) ..	127
Mayor of Lyons *v.* East India Company—1 M.I.A. 175 ..	98
Mayor, etc., of Coventry *v.* Attorney General (1720) 7 Brown. P.C. 235	445
Mercer, Exparte, re Wise—19 Q.B.D. 290	148
Mills *v.* Farmer—1 Mer. 55	123

UNIVERSITY OF CALCUTTA
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CENTRAL LIBRARY

NAMES	PAGES
Moggridge *v.* Thackwell—7 Ves. 36, 13 Ves. 416 ..	123
Mohanlalji *v.* Gordhan Lalji—40 I.A. 97	175, 190, 219
Mohar Singh *v.* Het Singh—32 All. 337	72, 166
Mohesh *v.* Kaylash—11 W.R. 443	461
Mohunt Baraswami Das *v.* Khashia Jha—20 W.R. 471 ..	304
Mohunt Bhagban Das *v.* Raghunandan—22 I.A. 94 ..	347, 386
Mohunt Joykrishna *v.* Bhuklal—6 Pat. L.J. 638 ..	378
Mohunt Kesodas *v.* Amardasji—14 Pat. 379	343
Mohunt Mahabir Prosad *v.* Jamuna Prosad I.L.R. 8 Pat 48 ..	294
Mohunt Puran *v.* Darshandas—34 All. 468	421
Mohunt Ram Charan Das *v.* Nourangilal—60 I.A. 124; 37 C.W.N. 541 ..	271, 291, 296, 305, 369, 379
Mohunt Ram Dhan Puri *v.* Mst. Parbati Kuer—16 Pat. 476	370
Mohunt Ramanuj Das *v.* Debraj Das—6 Mac. Sel. Rep. 262	346
Mohunt Ramji *v.* Lachhudas—7 C.W.N. 145 ..	353
Mohunt Ramprokash Das *v.* Mohunt Anandadas 43 I.A. 73	352
Mokoonda *v.* Ganesh—1 Cal. 104	142
Monie *v.* Scott—43 Bom. 281	82
Moniram Kalita *v.* Kerikalitani—5 Cal. 776, 7 I.A. 115 ..	223
Monmohan *v.* Siddheswar—27 C.W.N. 218	195
Monohar *v.* Bhupendra—37 C.W.N. 29; 60 Cal. 452 (F.B.)	47, 172, 200, 203, 210, 248
Monohar *v.* Bhupendra—A.I.R. (1936) P.C. 325 ..	452
Monohar Das *v.* Tarini—34 C.W.N. 135	282, 288, 290
Monohar Mukherji *v.* Rajah Peary Mohan—24 C.W.N. 478; 30 C.L.J. 177	262, 314, 316, 461, 463, 465
Monohar Singh *v.* Hakim—105 I.C. 665	241
Monorama *v.* Kalicharan—31 Cal. 166	113
Monorama Dasi *v.* Dhirendra Nath—34 C.W.N. 1081 ..	208, 210
Moore *v.* M'clynn—(1824) 1 Irish Rep. 74	445
Morarji *v.* Menbai—17 Bom. 351	76
Morice *v.* Bishop of Durham—9 Ves. 399, 10 Ves. 522 ..	54, 110, 111
Moss, In re, Hobrough, *v.* Harvey—(1949) A.E.R. 495 ..	62
Muddan Lal *v.* Sm. Kamal Bibee—8 W.R.C.R. 42 ..	172, 175
Mufti Ali Jaffar *v.* Fazul—44 All. 622	431
Mullick *v.* Mullick—1 Knapp 245	71, 139
Mundancheri *v.* Achutan Nair—61 I.A. 405; 39 C.W.N. 518	188
Munshilal *v.* Musst. Shiv Debi—4 Lah. 336	94
Murugasam Pillay *v.* Manikyavasaka—44 I.A. 98, 40 Mad. 402	299, 300, 382
Mussori Bank *v.* Raynor—9 I.A. 70	107
Muthai *v.* Perainan—4 Mad. 228	418
Muthu Kumar Shami *v.* Sabbaraya—A.I.R. (1931) Mad. 505	233
Muthusamier *v.* Sree Sree Mathutithi—38 Mad. 356 ..	341
Muthu Ramalingam, etc., *v.* Perianayagum—1 I.A. 209..	34, 344, 345, 346, 396

N

N. Sankanarayana *v.* The Board of Commissioner for Hindu Religious Endowment, Madras—A.I.R. (1948) P.C. 25 ..	196
Nabi Shirazi *v.* The Province of Bengal—I.L.R. (1942) 1 Cal. 211	418, 430

CENTRAL LIBRARY

NAMES	PAGES
Nafar Chandra Chatterji *v.* Kailas Chandra—25 C.W.N. 201	198
Nafar Chandra Kundu *v.* Ratanmala—15 C.W.N. 66 ..	144
Nagendra Nandini *v.* Benoy Krishna—30 Cal. 521 ..	163
Nagendra Nath *v.* Rabindra—30 C.W.N. 389 ; 53 Cal. 132 ..	238, 245, 285
Naina Pillai *v.* Ramanathan—51 I.A. 83	290
Nallayappa *v.* Ambalavana—27 Mad. 465	279
Nanalal *v.* Harlochand—14 Bom. 476	118
Nanbhai *v.* Trimbuk—(1878) Bom. P.J. 195	198
Narain *v.* Sri Ram Chandra—27 Bom. 373	303
Narasimha *v.* Achuthana—A.I.R. (1926) Mad. 297 ; 91 I.C. 924	438
Narasimha *v.* Ayyan—12 Mad. 157	436
Narasimha *v.* Venkatalingam—50 Mad. 687 (F.B.) ..	101
Narayan *v.* Chintamani—5 Bom. 393	279
Narayan *v.* Shiromoni—52 C.L.J. 78	314
Narayan Chandra Dutta *v.* Bhuban Mohini—38 C.W.N. 15 ..	208, 209, 210
Narayana *v.* Ranga—15 Mad. 183	232
Narendra *v.* Atul Chandra—27 C.L.J. 605	254
Narinjan Singh *v.* Kripal—5 Lah. 455	438
Nataraja *v.* Kailasami—48 I.A. 1	352
National Antivivisection Society *v.* Inland Revenue Commissioners (1948) A.C. 31	61
Navroji *v.* Dastur—28 Bom. 20	435
Nawab Bahadur of Murshidabad *v.* Karnani Industrial Bank Ltd.—58 I.A. 215 ; 35 C.W.N. 791	241, 295
Nelliappa *v.* Punnaivanam—50 Mad. 567	414, 415
Nemayee Charan *v.* Jogendra—21 W.R. 365	173
Niladri Sahu *v.* Mohunt Chaturbhuj Das—53 I.A. 253 ..	283, 292, 294, 295, 373, 375, 378
Nilkanta *v.* Ramkrishna—46 Bom. 101	442
Nilmoni Singh *v.* Jagabandhu—23 Cal. 536	303, 304
Niranjan Barthee *v.* Padarath—1 S.D.A. for N.W.P. 512 ..	347
Nirmal Chandra *v.* Jyoti Prosad—45 C.W.N. 709 ; I.L.R. (1941) 2 Cal. 128	223, 225, 255, 315, 316, 386, 451, 462, 463
Nirmal Chandra *v.* Jyoti Prosad—42 C.W.N. 1138 ..	238
Nirode Mohini *v.* Shibdas—36 Cal. 975	233, 234, 238
Nittakanta *v.* Neeranjan—22 W.R. 437	243
Nritya Gopal Sen *v.* Mani Chandra—12 C.W.N. 63 ..	290

O

Official Receiver *v.* Jogmaya—50 C.W.N. 272 ..	276

P

Palaniappa Chetti *v.* Devasikamony—44 I.A. 147	278, 281, 284, 287, 377, 378
Palanibala *v.* Kalipada—54 C.W.N. 960	297, 308, 313
Pallaya *v.* Ramavadhunulu—13 Mad. L.J. 364 ..	101
Panchanan *v.* Surendra—50 C.L.J. 382	205
Panchand *v.* Monoharlal—42 Bom. 136	96
Panchcowree Mal *v.* Chumroolal—I.L.R. 3 Cal. 563 ..	405

UNIVERSITY OF CALCUTTA
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NAMES	PAGES
Panchkari *v.* Amodelal—41 C.W.N. 1349 ..	263, 271, 273, 462
Pande Har Narayan *v.* Surja Kumari—48 I.A. 143 ; 25 C.W.N. 961	179
Parbati Bibee *v.* Ram Barun—31 Cal. 895	122
Parmanand *v.* Nihalchand—65 I.A. 252 ; 42 C.W.N. 1013 ..	330, 350
Parshottam *v.* Desai Bhai—A.I.R. 1932 Bom. 459 ..	335
Parthasarathi Pillai *v.* Thiru Vengada—30 Mad. 340 ..	65, 117
Pasupathi Nath *v.* Pradyumna Kumar—63 Cal. 454 ..	301
Peary Mohan *v.* Kedar Nath—26 Cal. 409 (F.B.) ..	256
Peary Mohan *v.* Monohar—48 I.A. 258 ; 48 Cal. 1019 ..	311, 316
Peary Mohan *v.* Narendra—36 I.A. 37	312
Perumal *v.* Saminath—19 Mad. 498	386
Peesapati *v.* Kanduri—1915 M.W.N. 842 ; 18 M.L.T. 543 ..	175, 188, 190
Peezeeroddeen *v.* Modhoosoodan—2 W.R. (F.B.) 15 ..	78
Phatmabi *v.* Haji Mussa—38 Mad. 491	448
Philips *v.* Burry—(1788) 2 T.R. 346	393
Phundan Lal *v.* Arya Pratinidhi Sabha—33 All. 795 ..	166
Pitt *v.* Jackson—(1786) 2 Brown C.C. 51	132
Ponnambala Desikar *v.* Periyanam—63 I.A. 261 ; 40 C.W.N. 901	290, 379
Ponniatha *v.* Moothedath—40 Mad. 110	441
Porter, In re—(1925) Ch. 746	110
Prafulla Chandra *v.* Jogendranath—9 C.W.N. 528 ..	72, 103, 139
Pranjivan Das *v.* Deo Kuvarbai—1 B.H.C.R. 76 (Note) ..	115
Prasanna Deb *v.* Bengal Duars Bank—64 C.L.J. 379 ..	158
Prayad Das *v.* Mohunt Kriparam—8 C.L.J. 499 ..	358, 361
Prayag Das *v.* Tirumala—34 I.A. 78	454, 457, 459
Premnath *v.* Hariram—10 Lah. 85	103
Promatha *v.* Pradyumna—52 I.A. 245 ; 30 C.W.N. 25 ..	45, 160, 193, 198, 215, 246, 258, 462, 466
Promotha Dasee *v.* Radhika Persaud—14 B.L.R. 175 ..	140
Promotha Nath *v.* Anukul Chandra—29 C.W.N. 17 ..	202
Prosad Das Pal *v.* Jagannath Pal—60 Cal. 538 ; 37 C.W.N. 181	188, 466
Prosonna Kumari Debya *v.* Golab Chand Baboo—2 I.A. 145 ; 14 B.L.R. 450	160, 197, 236, 237, 273, 277, 279, 292, 293, 369
Protap Chand *v.* Brojonath—19 Cal. 275	189
Protapmull *v.* Iswar Gopal—48 C.W.N. 172	300, 305
Pujari Lakshmana Goundan *v.* Subramaniya—29 C.W.N. 112 (P.C.)	186, 189, 419
Puran Dai *v.* Jai Narain—4 All. 482	94
Puranmal *v.* Brijlal—39 All. 651	244
Purmanum Dass *v.* Vinayek Rao—9 I.A. 86	76
Purna Chandra *v.* Kalipada—A.I.R. 1942 Cal. 386 ..	166

R

Rabindra *v.* Chandika—53 C.L.J. 621	466
Radhacharan *v.* Sree Sree Iswar Joykali Bigraha 46 C.W.N. 94	257
Radhamadhab *v.* Rajendra—12 Pat. 727	96
Radhamohan *v.* Jadoomonee—23 W.R. 369	217
Radhaprosad *v.* Ranimani—38 Cal. 188	138

CENTRAL LIBRARY

NAMES	PAGES
Radharani *v.* Doyal—33 C.L.J. 141	234
Radhika *v.* Amrita—A.I.R. (1947) Cal. 301	208
Raghbir Lal *v.* Mohammed Said—A.I.R. (1943) P.C. 7 ..	334
Raghubar *v.* Kesho—11 All. 18	418, 437
Raghumoni Roy *v.* Bibhuti Bhusan—64 C.L.J. 65 ..	286
Raghunath *v.* Gobind—8 All. 76	89, 90
Raghunath *v.* Jiban—27 C.W.N. 312	357
Raghunath *v.* Purnanand—47 Bom. 529	235
Raisundary *v.* Binode Behary—39 C.W.N. 1264	215
Raj Krishna *v.* Bepin Behary—I.L.R. 40 Cal. 17 C.W.N. 591	251, 461
Raja of Kalahasti *v.* Ganapati—(1918) M.W.N. 48 I.C. 897	555, 445
Rajah Leelamand *v.* Ishuree Nandan—8 W.R. 316 ..	173
Rajah Muttu Ramalinga *v.* Perianayagum Pillai 1 I.A. 209	344, 345, 346, 396
Rajah Vurmah *v.* Ravi Burmah—4 I.A. 76 ; 1 Mad. 235 ..	228
Rajendra Dutt *v.* Shamchand—6 Cal. 106	163
Rajendra Lall *v.* Rajcoomari—34 Cal. 5	75, 144
Rajendra Nath *v.* Seikh Mohammad—8 Cal. 42 (P.C.) ..	254
Rajeswar Mullick *v.* Gopeswar Mullick—35 Cal. 12 C.W.N. 323	226, 234, 235, 237
Rajeswari Debia v. Jogendra—23 W.R. 278	72, 75
Ram Brahma *v.* Kedar—36 C.L.J. 478	158
Ram Chandra *v.* Ganga Govind—4 Mad. Sel. Rep. 147 ..	96
Ram Chandra *v.* Paramaswaram—42 Mad. 360 ..	437, 438
Ram Chandra *v.* Ranjit—27 Cal. 242 ; 4 C.W.N. 405 ..	168, 170
Ram Charan Ramanuj *v.* Gobinda Ramanuj—56 I.A. 104 ..	361
Ram Charan *v.* Nanhoo—14 W.R. 147	291, 313
Ram Charan *v.* Naurangilal—60 I.A. 124 ; 37 C.W.N. 541 ..	271, 369
Ram Das Bhagat *v.* Krishna Prosad—A.I.R. (1940) Pat. 425	412, 442
Ram Dhan *v.* Prayag Narain—43 All. 503	168
Ram Kamal Singh *v.* Ramkishore—22 Cal. 506 ..	93
Ram Krishna *v.* Ratan Chand—58 I.A. 173	302
Ram Lal Sen *v.* Bidhumukhi—47 Cal. 76	144
Ram Pershad Das *v.* Sree Haree—18 W.R. 399 ..	175
Ram Prakash Das *v.* Ananda—43 I.A. 73	325, 342, 354, 362, 384, 413
Ram Rup Goshain *v.* Ramdhari—47 All. 770	431
Ram Saran *v.* Iswar—17 Pat. L. Times 77	241
Ram Sundar *v.* Tarak Chandra—19 W.R. 28	242, 246
Ram Surat *v.* Hita Nandan—10 Pat 474	96
Ram Swarup *v.* Thakur Ramchandraji—A.I.R. (1935) Nag. 35	104
Rama Mohan *v.* Basudev—A.I.R. (1950) Orrissa 28 ..	363
Raman Lalji *v.* Gopal Lalji—19 All. 428	243
Ramanathan Chetti *v.* Murugappa—33 I.A. 39	197, 242
Ramaswami *v.* Muthu Karuppan—A.I.R. (1925) Mad. 1011 ; 86 I.C. 371	439, 443
Rameswar Pagoda Case—1 I.A. 209 ..	34, 344, 345, 346, 396
Ramiengar *v.* Gnansambanda—5 Mad. H.C.R. 53 ..	397

CENTRAL LIBRARY

NAMES	PAGES
Ramlagan *v.* Nandipat—A.I.R. (1938) Pat. 143 ..	380
Ramlinga Chetti *v.* Siva Chidambara Chetty—42 Mad. 440 ..	90, 100
Ramlingam Pillai *v.* Vythilingam—20 I.A. 150 ..	349, 352
Ranchoddas *v.* Parbati Bai—26 I.A. 71	71, 116, 117
Rangaswami *v.* Varadappa—17 Mad. 462	442
Rathnam *v.* Siva Subramanya—16 Mad. 353	89
Rawan Pershad *v.* Radha Beeby—4 M.L.A. 137 ..	206
Reynolds, Exp.—(1800) 5 Ves. 707—5 R.R. 143	445
Rojomoyi *v.* Troylukko—29 Cal. 260	163
Ronald Duncan Cromartie *v.* Sri Sri Iswar Radha Damodar 62 C.L.J. 10	174, 298
Rungachariar *v.* Yegna—13 Mad. 424	332
Rup Narain *v.* Junko—3 C.L.R. 112	227
Rupa Jagashet *v.* Krishanji—9 Bom. 169	71
Russel *v.* Jackson—10 Ha. 204	62, 64

S

S. Massirat Hossain *v.* Hossain Ahmed—42 C.W.N. 345 ..	422, 425
Sabitri Thakurani *v.* F. A. Savi—12 P. 359	227
Sahu Ram Chandra *v.* Bhup Singh—44 I.A. 126	88
Sajedur *v.* Gour Mohan—24 Cal. 418	437, 441
Sakharam *v.* Ganu—45 Bom. 683 — — —	453
Sam Sundar *v.* Kendusami—I.L.R. 10 Mad. 375 ..	461
Sammantha Pandara *v.* Sellappa—2 Mad. 175	327, 339, 363
Sandford *v.* Keach—Sel. Ca. Ch. 61	415
Sankara Murthi *v.* Chidambaram—17 Mad. 143 ..	401
Sankara Narayanan *v.* Shri Poovanatha—A.I.R. (1949) Mad. 721 (F.B.)	272
Sankareswar *v.* Bhagabaty—A.I.R. (1949) Pat. 193 ..	220
Santana Ray *v.* A.G. of Bengal—48 Cal. 1 ; 25 C.W.N. 343 ; 32 C.L.J. 453	131, 133
Sarab Sah *v.* Ram Prosad—46 All. 130	72
Sarat Chandra *v.* Protap Chandra—40 Cal. 232 ..	119
Sarbamangala *v.* Mahendra—4 Cal. 508	121
Sardar Singh *v.* Kunj Behari—49 I.A. 383	91
Sarkies *v.* Prosannamoye—6 Cal. 794	98
Sarojini *v.* Jnanendra—23 C.L.J. 241	145, 181
Sashi *v.* Dhirendra—45 C.W.N. 699	270
Sathappayyar *v.* Periasami—I.L.R. 14 Mad. 1	188, 387, 389, 421, 461
Satish Chandra Giri *v.* Dharanidhar—44 C.W.N. 177, 71 C.L.J. 1.	445
Satnam Singh *v.* Bawa Bhagwan Singh—40 Bom. L.R. 912 ; A.I.R. (1938) P.C. 216 ; 68 C.L.J. 44	355
Satwanti Kuer *v.* Ambica Prosad—A.I.R. (1939) Pat. 45 ..	103
Sayad *v.* Collector of Kaira—21 Bom. 48	441
Scowcroft, In re—(1898) 2 Ch. 638	62
Seena Peena Reena *v.* Chokklingam—31 I.A. 83 ..	278
Seshadri Ayyangar *v.* Nataraja—21 Mad. 179	401
Sethu Ramaswamiar *v.*Meraswamiar—45 I.A. 1	359, 466
Sevak Kripasankar *v.* Gopal Rao—16 C.L.J. 640 (P.C.); 15 Bom. L.R. 13	457
Shilajanunda *v.* Umeshananda—2 C.L.J. 460	251, 439, 441

CENTRAL LIBRARY

NAMES	PAGES
Sham Dei *v.* Birbhadra—43 All. 463	94
Sham Lal *v.* Hurro Soondaree—5 W.R. 29	159
Shankar Bharati *v.* Venkappa—9 Bom. 422	372
Shanmukham *v.* Gobinda—A.I.R. (1938) Mad. 92 ..	434
Sharat Chandra Shee *v.* Dwarknath Shee—58 Cal. 619 ..	267
Sheoratan *v.* Ram Purgesh—18 All. 227	189, 461
Sheosankar *v.* Ram Sewak—24 Cal. 77	75
Simba *v.* Rama—13 Bom. 548	243
Singh Sonatan *v.* Singh Rajput—65 I.A. 106	169
Sitaprosad *v.* Thakurdas—5 C.L.R. 73 — ..	351, 355
Sitaldas *v.* Protap Chandra—11 C.L.J. 2	314, 461
Sitaram Bhat *v.* Sitaram Ganesh—6 Bom. H.C.R. 250 ..	231
Sitharam Chetty *v.* Sri S. Subramiya Ayyar—39 Mad. 700 ..	34, 402, 404
Sivakanta *v.* Raja Ram—A.I.R. (1950) Assam 154 ..	107
Smelting Company of Australia *v.* Commissioner of Inland Revenue—(1897) 1 Q.B. 175	430
Smith *v.* Armitage—24 Ch. D. 727	452
Somasundaram *v.* Vaithilinga—40 Mad. 846	336
Sonatan Baysack *v.* Jaggat Soondaree—8 M.I.A. 66 ..	140, 177, 179
Sookhomoy Chandra Das *v.* Sm. Monohari—12 I.A. 103 ..	139, 142
Speight, in re. Speight *v.* Gaunt—22 Ch. D. 727	274
Sreenath Devasikamony *v.* Palaniappa—34 Mad. 535 ..	279, 283
Sri Radhakrishna *v.* Maharaj Kumar—12 Luck 331 ..	272
Sri Thakur Pammod *v.* Atkins—4 P.L.J. 537	170
Sri Takurjee *v.* Sukhdeo Singh—42 All. 395 (F.B.) ..	106, 167, 170
Sri Thakurji *v.* Muthro Prosad—A.I.R. (1941) Pat. 354 ..	299, 306, 377, 381
Sri Thakurji *v.* Nand Ahir—43 All. 560	90
Sri Vedapureswar *v.* Sudarsana—A.I.R. (1946) Mad. 74 ..	273
Sri Sri Gopal *v.* Shoshee Bhusan—60 Cal. 111 ..	274,.275, 276
Sri Sri Gopal Jew *v.* Protapmull—A.I.R. (1951) S.C. 214 ..	300
Sri Sri Gopal Jew *v.* Radha Binode—41 C.L.J. 396 ..	175
Sri Sri Iswar Kalimata *v.* Nagendra—44 C.L.J. 522 ..	170, 262
Sri Sri Iswar Lakshi Durga *v.* Surendra—45 C.W.N. 665 ..	242, 254
Sri Sri Iswar Lakshi Janardon *v.* Khitish—55 C.L.J. 26 ..	105, 168
Sri Sri Iswar Narayan Jiew *v.* Soler—(1937) 2 Cal. 133 ..	302
Sri Sri Iswar Sridhar Jew *v.* Joharlal Mukopadhaya—49 C.W.N. 37	257
Sri Sri Iswar Sridhar Jew *v.* Kanta Mohan Mullick—5 C.W.N. 14	257, 268
Sri Sri Iswar Bhubaneswari Thakurani *v.* Brojonath De—64 I.A. 203	180, 194
Srijib Nayatirtha *v.* Smt. Dandiswami—A.I.R. (1941) Cal. 618	454, 457
Srinath *v.* Radhanath—12 C.L.R. 370	387 445
Srinath Daibasikamoni *v.* Noor Mohamed—31 Mad. 47 ..	372
Srinath Daibasiknamani *v.* Periyanam Chetti—63 I.A. 261 ..	380
Srinivasa *v.* Evalappa—49 I.A. 237 ; 45 Mad. 565 ..	198, 359, 444
Srinivash Moorthy *v.* Venkata—34 Mad. 257	310
Sripati v. Krishna—41 C.L.J. 22	194, 203, 209, 212
Sripati Prosadji *v.* Barot Laxmidas—33 C.W.N. 352 (P.C.) ..	454
Stackpole *v.* Stackpole—4 Dr. & Wa—320	132

CENTRAL LIBRARY

NAMES	PAGES
Strickland *v.* Symons—(1884) 26 Ch. D. 245	372
Subbaya *v.* Krishna—14 Mad. 186	441
Subbaya *v.* Mustapha—50 I.A. 295	291, 297, 306
Subramaniya *v.* Abhinava—A.I.R. (1940) Mad. 617 ..	272, 369
Subramaniya *v.* Venkatachala—4 L.W. 444	189
Subramanya Pillai *v.* Krishnaswami—42 Mad. 668 ..	443
Sudarsan Das *v.* Mohunt Ram Kripal..77 I.A. 42 ..	298, 306
Sudhindra *v.* Budan—9 Mad, 80	370
Sundarambal *v.* Yogavanagurukul—38 Mad. 850	221, 222, 230, 245
Surendra Keshav Roy *v.* Doorga Soondari Dasee—19 I.A. 108	180
Surendra Krishna Roy *v.* Sri Sri Iswar Bhubaneswari Thakurani 60 Cal. 54	179, 194, 258, 309, 310
Sushil Chandra *v.* Govinda Mohan Das—A.I.R. (1934) Pat. 431	359
Sutton, Re. Stone *v.* Att. General—(1885) 28 Ch. D. 464 ..	112
Swain. In re—(1905) 1 Ch. 669	142
Syamlal *v.* Hiranath—A.I.R. (1934) All. 685 ..	289

T

Tagore *v.* Tagore—9 B.L.R. 377 ; 18 W.R. 357 ; I.A. Supp. 47	136, 138, 162, 163, 201, 202, 203, 343
Taleboonissa *v.* Koomar Shamkishore—15 W.R. 228 ..	286
Tami Reddi *v.* Gangi Reddi—45 Mad. 281	100
Tarakeswar Case—(Unreported F.A. 1 of 1950 disposed of on 6.2.34 Calcutta High Court)	330
Tarit Bhusan *v.* Sri Sri Iswar Sridhar Salgram—45 C.W.N. 932	263, 268
Tatayya *v.* Garimilla Ramkrishnamma—34 Mad. 288 ..	92, 95
Teelak Chand *v.* Shama Chand—1 W.R. 209	335
Templemoyle School, In re—1 Ir. R. 4 Eq. 295	125
Thackersay Dewraja *v.* Hurbhum Nursey—8 Bom. 432 ..	160, 186, 248, 312, 383, 418
Thakur Prosad *v.* Musst. Dipa—10 Pat. 352	94, 95
Thakur Raghunath *v.* Shah Lalchand—19 All. 330 ..	259
Thakur Sri Sri Annapurna *v.* Shiva Sundari Dasi—I.L.R. (1944) 2 Cal. 144	268
Thamba *v.* Arundal—6 Mad. 287	329
Thanga *v.* Arumga—5 Mad. 383	409
Thompson *v.* Thompson—(1846) 1 Coll. 395	114
Thornton *v.* Howe—31 Beav 14	59, 70
Tirumalai *v.* Udiavar—A.I.R. 1943 Mad. 466 (F.B.) ..	434
Tiruvambala *v.* Chinna Pandaran alias Manikkavacha 40 Mad. 177	351, 387
Tiruvengadath *v.* Srinivasa—22 Mad. 361	386
Titley, In re—(1923) 1 Ch. 258 ; 1924 A.C. 262 ..	63
Tricumdas Mulji *v.* Khimji—16 Bom. 626	76
Trikamdas *v.* Hari Das—31 Bom. 583	119
Trimbak *v.* Lekhram—20 Bom. 495	189
Trimbak Puri *v.* Ganga Bai—11 Bom. 514	350
Tripura *v.* Jagat Tarini—40 I.A. 37	205
Trustees of the Tribune Press, Lahore, The *v.* The Commissioner of Income Tax, Punjab—66 I.A. 241 ..	83, 85

CENTRAL LIBRARY

U

NAMES	PAGES
Tyler, In re—(1891) 3 Ch. 252	135
Tyson *v.* Smith—9 Adx. E. 406	239
Ukoor Das *v.* Chandra Sekhar Das—3 W.R. 152 ..	233
Umeshananda *v.* Sir Ravaneswar Prosad Singh—17 C.W.N. 841, ...	457
University of Bombay, The *v.* The Municipal Commissioners for the City of Bombay 16 Bom. 217	81
University of London *v.* Yarrow—1 De G. & J. 72 ..	60
University of London Med. Sciences Inst. Fund, Re (1909) 2 Ch. 1	127
Upendra *v.* Baikuntha—33 C.W.N. 96	271
Upendralal Boral *v.* Hem Chandra—25 Cal. 405 ..	162
Upendranath *v.* Kusumkumari—42 Cal. 440	273

V

V. K. Kelu *v.* C. S. Sivaram—A.I.R. (1928) Mad. 879 ..	420
Vaidyanath *v.* Kunja Kumar—A.I.R. (1949) Pat. 75 ..	378
Vaidyanath Ayyar *v.* Swaminath Ayyar—51 I.A. 282; 29 C.W.N. 154 .. .. 118, 422, 438, 439	
Veeraraghavachariar *v.* The Advocate General of Madras 51 Mad. 30 (F.B.)	456
Veluswami *v.* Dandapani—A.I.R. (1946) Mad. 485 ..	72
Vembu *v.* Srinivasa—23 M.L.J. 638	281
Venkatachala *v.* Sambasiva—52 Mad. L.J. 288	247
Venkatachalapati *v.* Subbarayadu—13 Mad. 293 ..	226
Venkatanarasimha *v.* Subba Rao—46 Mad. 300 ..	427
Venkataraman Ayyangar *v.* Kasturi Ranga 40 Mad. 212 ..	288
Vibhudapriya *v.* Lakshindra—54 I.A. 228 294, 295, 324, 374, 376	
Vickery, Re, Vickery *v.* Stephens (1931) 1 Ch. 572 ..	276
Vidya Purna *v.* Vidyanidhi—27 Mad. 435 27, 223, 327, 339, 340, 341, 364, 384	
Vidya Varathi *v.* Baluswami—48 I.A. 302 48, 50, 199, 225, 248, 280, 303, 304, 338, 342, 343, 366, 375, 379, 413	
Villiers, In re. *v.* Wilkes—72 L.T. 323	64
Vishram Manji *v.* Gangaram—A.I.R. (1939) Sind 13 ..	423
Vundraban Das *v.* Cursen Das—21 Bom. 646	115
Vythilinga *v.* Soma Sundaram—17 Mad. 199	72, 199

W

Wares Ali *v.* Sheikh Samsuddin—63 C.L.J. 573	459
Watson *v.* Ramchand—18 Cal. 10 (P.C.) 105, 167, 169	
Weall, In re, Andrews, *v.* Weall—42 Ch. D. 674	275
Webb *v.* Earl of Shaftsburry—7 Ves. 480	310
Weir *v.* Crum Brown—(1908) A.C. 162	114
West *v.* Shuttleworth—2 My. & K. 684	57, 68
Wharton *v.* Masterman—(1895) A.C. 186	142
Whicker *v.* Hume—(1858) 7 H.L.C. 124	56
White, In re—(1893) 2 Ch. 41	56
White *v.* White—7 Ves. 423	135
Wilson, In re—(1913) 1 Ch. 314	124
William *v.* Kershaw—5 L.J. Ch. 84; 5 Cl. & F. 111 N. ..	112, 119

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Yama.

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TABLE OF CONTENTS.

Lecture I.—The fundamental ideas underlying religious and charitable trusts in the Hindu Law 1

Existence of religious and charitable trusts in almost all systems of civilized law, 1. Paucity of materials on the subject of endowments in Hindu Law, 2. Hindu Law on religious and charitable trusts primarily a judge made law, 3. Meaning of religious and charitable trusts, 4. Conception of trust in English Law, 5. Artificialities of the English Law not essential to conception of trust, 7. Charitable and religious institutions in Roman Law, 8. Hindu conception of religious and charitable gifts—*Istha* and *Purtta*, 12. No temple, idol worship or monastic institution in Vedic Age, 16. *Propatha* or Rest House in Vedic time, 19. Temples during Suttra period, 20. Rise of monasticism in the Buddhist age, 22. Charitable works for men and animals in Buddhist period, 25. Image worship an indirect result of Buddhism, 25. Sankaracharya and establishment of Hindu Mutts, 27. Ramanuj and his order, 28. Ramanand, Madhwa, Nimbarka, Vallavacharya and Shri Chaitannya, 29. Idol worship in India, 30. Popular forms of religious and charitable benefactions amongst the Hindus, 32. Legal ideas underlying the various endowments, 33. Essentials of dedication, 36. Different formulæ for different kinds of dedication, 36. Dedication of Mutts, 37. Dharamsalas, 38. Temples, 38. In whom does the property vest after dedication ? 39. Does property vest in the foundation ? 42. Can it reside in the aim or purpose? 43. Deity, owner in what sense ? 45. Ownership of tanks and trees after dedication, 47. Administrators or Managers are trustees in general sense, 47. Legislation on the subject of religious and charitable trusts in India, 49.

Lecture II.—Essentials of religious and charitable trusts under Hindu Law 52

Essentials of a valid, religious or charitable trust, 52. Meaning of charity in English Law, 53. Statute of Elizabeth the foundation of the English Law of

CENTRAL LIBRARY

Charity, 54. Classes of charity 54. Distinction between public and private purpose, 55. Relief of poverty, 55. Educational gifts, 56. Gifts for religion, 56. Law of superstitious uses in England, 57. Gift for celebration of masses not void, 57. Gifts for religion where public benefit is lacking, 58. Gifts to life-saving societies, 60. For prevention of cruelty to animals, 60. Suppression of vivisection whether a charitable object ? 61. Trusts for benefit of animals, 61. Propagation of controversial doctrines may be charitable, 62. Sports and recreation whether charitable objects ? 64. Religious and charitable purpose in Hindu Law, 65. Law of superstitious uses not applicable to India, 67. Gifts to idols whether public or private are valid, 71. *Mutts* are recognised pious institutions amongst Hindus, 72. "*Sradh*" a valid object of charity, 73. Usual religious and charitable gifts amongst Hindus, 73. Reading of sacred books, 74. *Dharamsalas*, 75. *Sadabrats*, 76. Excavation of tanks and wells, 76. Consecration of trees and groves, 79. Hospitals and educational institutions, 80. Competency of settlor to create trusts under Hindu Law, 85. Disabilities of coparceners in a Hindu joint family in the matter of creation of trusts, 87. Disabilities of Hindu female heirs in respect of property inherited from males, 90. What charitable and religious gifts by Hindu widows are permissible ? 91.

Lectures III.—Essentials of valid, religious and charitable trusts (continued) 97

Formalities of a valid trust under English Law, 97. Statutory restrictions on settlor's rights in case of charitable trusts, 97. No restrictions in Hindu Law, 98. No deed in writing either in the form of gift or trust necessary to create a religious or charitable trust in Hindu Law, 99. Essentials of dedication in Hindu Law, 100. Ceremonies of *Sankalpa* and *Samarpan* though relevant are not essential, 103. Mere execution of document not enough if there is no intention to act upon the deed, 104. Uncertainty of the subject matter or purpose of the trust fatal to the creation of a valid trust, 107. Rules of English Law for determining definiteness of the objects of charitable trusts, 110. Result of the application of these rules in India, 113.

CENTRAL LIBRARY

Gift for "Dharam" whether uncertain, 115. Proper meaning of "Dharam" according to Hindu ideas, 117. Rules of construction when the trustee is given the choice between two alternatives, one of which fails as a gift for charity, 119. Doctrine of *Cy-pres*, 123. Application of the doctrine when there is a general charitable intention and there is a failure of a particular object specified by the settlor or a surplus left after satisfying the particular purpose, 124. Objects chosen should be akin to the objects that fail, 126. *Cy-pres* doctrine not displaced even if the residuary bequest is to charity, 127. The trust must not infringe the provisions of any law, 133. Charitable trust and rule against perpetuities, 134. Law of perpetuity has no application to a gift in favour of an idol, 139. Direction for accumulation, 141. Bankruptcy of the settlor how far affects the trust ? 145. Avoidance of charitable trust at the instance of creditors, 147.

Lecture IV.—Religious trust in favour of idol (debutter) 150

No idol worship in the Vedic Age, 151. Pouranic Gods, 152. Building and consecration of temples, 154. Images—their description, 155. *Pratistha* or consecration of images, 156. Worship of the idol, 158. Reconstruction or purification of idols, 158. Dedication of property essential for debutter, not mere establishment of deity, 159. Dedicated property vests in the idol as juristic person, 160. Essential ideas in the conception of debutter, 161. Formalities of dedication, 161. Is actual existence of the idol at the time of dedication essential for creation of debutter ? 162. Deity must be named, 166. Real and nominal debutter, 167. Description of property as debutter not conclusive, 172. Evidentiary value of Rubkaries in resumption proceedings in proof of debutter, 173. Value of entries in Settlement Records, 174. Absolute and partial debutter, 176. Partial debutter when arises, 177. Direction for accumulation of surplus not necessarily an indication of partial debutter, 181. Gift to heirs not as shebaits is *prima facia* such indication, 181. Private and public debutter, 185. Tests for determining whether debutter is public or private, 186. Statutes relating to debutter, 190. Whether in private debutter the consensus of the family can give the

CENTRAL LIBRARY

debutter a secular turn ? 192. Kattalai or special gift, 195.

Lecture V.—Management of Debutter—Shebaitship—its legal character and incidents 197

Shebait the human ministrant of the deity, 197. Pujari different from shebait, 198. Hereditary priest, 198. Shebait not a trustee in English sense, 199. Shebaitship is not mere office, it is office blended with property, 200. Shebaitship remains in the founder and his heirs unless disposed of, 201. It devolves like any other species of heritable property, 201. Founder's powers of disposition over shebaiti right subject to the same limitations as in other property, 202. Shebaitship can be given absolutely or for life, 205. Heirs of founder succeed after the death of a shebait for life. How heirs of the founder are to be ascertained ? 205. Founder cannot alter or revoke appointment of shebait unless such powers are reserved, 208. Additional endowments and alteration in the line of the shebaits, 211. Devolution of shebaitship—disabilities of successors by reason of caste, sex, or other disqualifications, 216. Woman's right to succeed as shebait, 217. Degraded social position of *Archakas* in Hindu society, 220. Other disqualifications regarding succession to shebaitship, 223. Shebaitship and change of religion, 226. Shebait's right of nominating successor, 227. Extinction of the line of shebait, 227. Shebaiti right not alienable in law, 228. Sale of shebaitship altogether void, 228. The same principle applies to leases and mortgages, 229. Involuntary alienation of shebaiti right, 230. Exceptions to the general rule against alienation of shebaitship, 230. Alienation in favour of the next shebait or one in the line of succession or to a co-shebait, 231. Alienation on the ground of necessity or benefit to the idol, 235. Alienaton of shebaiti right on the footing of custom, 239. Partition of shebaiti right, 241.

Lectures VI and VII.—Administration of Debutter—Rights, duties and powers of a Shebait .. 245

Duties of a shebait, 245. Custody of idol and right of removal, 246. Shebait to use reasonable care, 247. Shebait not entitled to remuneration,

CENTRAL LIBRARY

248. Shebait's right to the offerings, 249. Shebait's right of residence, 252. Shebaits must act jointly, 252. Whether all the shebaits are to be co-plaintiffs in a suit brought on behalf of the deity ? 254. Right of suit in regard to deity's property, 258. Hindu idol not a perpetual infant, 258. Shebait's right of suit, 258. Right of suit of persons other than the shebait, 262. Deity's right of suit as a juristic person, 265. Appointment of guardian by court to represent deity, 266. Deity not a necessary party in all suits relating to debutter, 270. Rights of *de facto* shebait, 271. Effect of a decree against shebait and shebait's power of compromise, 273. Shebait cannot delegate authority, 274. Shebait's power of alienation of debutter property, 277. Shebait can alienate income as well as corpus, 279. Effect of alienation by shebait without legal necessity, 280. Transfer of the entire endowment void altogether, 280. Necessity and benefit of idol—what they mean ? 280. Necessity justifying alienation, 283. Alienation by way of lease, 285. Necessity justifying permanent lease, 286. Whether permanent lease could be validated by custom ? 288. Permanent lease whether void or voidable ? 290. Mortgage of debutter property by shebait, 291. Form of decree to be passed in creditors' suits, 293. Sale of debutter property—is it void altogether in the absence of legal necessity ? 295. Sale void if the entire endowment is transferred or any endowed property is sold as the personal property of the shebait, 296. Same principle applies to mortgage sale, 297. Sale in execution of a money decree, 297. Alienation when there is part justification, 299. Burden of proof in suits to set aside transfer of debutter property, 299. Alienation of debutter property with leave of court, 301. Limitation for suits to set aside alienation by Manager of endowed property, 303. When do the new articles apply ? 308. Shebait cannot assert adverse title, 309. Shebait not to profit by trust property, 310. Duty of shebait to keep accounts, 312. Shebait not to mix deity's money with his own, 312. Right to reimbursement, 312. *De facto* shebait not a trespasser and not a constructive trustee, 313. Title to office of shebait by adverse possession,

CENTRAL LIBRARY

313. Termination of the office of shebait, 314 ; by death, 314 ; by resignation or relinquishment of office, 314 ; by subsequent disability, 315 ; by removal, 315.

Lectures VIII and IX.—Religious institutions or Mutts—Administration of Mutts, legal status, rights, duties and powers of Mohunt 317

Meaning of Mutt, 317. Fourfold division of life in Vedic age not compatible with monasticism, 317. Monastic institutions established in India by Buddha and his followers, 318. Hindu Mutts established by Shankar, 320. Whether Sudras can become Sannyasis ? 321. Practice of establishing Mutts followed by Ramanujam and other religious teachers, 322. Ramananda and his school, 323. Madhwacharya, 323. Nimbarka and Vallavacharya sects, 324. School of Shri Chaitannya, 324. Mutts of Sudra ascetics, 325. Essential features of a Mutt distinguishing it from debutter, 326. Is idol an essential element in Mutt ? 328. Entry into religious order operates as civil death, 330. Ceremonies of initiation, 330. Probationary period before initiation, 331. Initiation of Sudra ascetics, 332. Can an ascetic acquire and hold personal property ? 333. Succession to after-acquired property of ascetic, 334. No loss of status when renunciation is not complete, 334. Vairagis are not ascetics in the proper sense, 335. Succession to property of Sudra ascetics, 336. Origin of Mutts, 336. Mutts as off-shoot of an existing institution, 337. In whom does the Mutt property vest ? 338. Legal status of a Mohunt, 339. Is Mohuntship property ? 343. Succession to the office of Mohunt, 344. Three classes of Mutts, 346. Mourashi Mutts, 346. Appointment of successor by Mohunt, 349. Appointment of successor by act inter vivos or will, 350. Appointment when invalid, 351. Right of appointment cannot be delegated, 352. Who can be appointed Mohunt ? 354. Confirmation of appointment by fraternity of monks, 354. Punchayati or elective Mutt, 356. Hakimi Mutt, 357. Personal heirs as Mohunts, 357. Succession in case of subordinate Mutts, 358. Succession to personal property of a Mohunt, 358. Office of Mohunt not partible, 359. Mohuntship not transferable, 361. Mohunt cannot

CENTRAL LIBRARY

delegate powers, 362. Mohunt's right to management and possession of Mutt property, 362. Ordinary duties of a Mohunt in respect to the endowment, 362. Mohunt's right to the surplus income of endowed property, 363. Mohunt's right of suing and being sued, 366. Right of suit of *de facto* Mohunt, 368. Suit by persons interested in the Mutt, 369. Judgment against a Mohunt binds his successor, 369. Decree on compromise, 370. Mohunt's power to borrow money, 371. Form of decree to be passed in a creditor's suit, 373. Mohunt's power of alienation, 374. Legal necessity what it means ? 375. Benefit to the Mutt, 377. Lease by a Mohunt, 378. Alienations without legal necessity valid during the life-time or tenure of office of the grantor, 379. Limitation in suits for recovery of Mutt property improperly alienated, 381. Onus of proof, 381. Mohunt's liability to account, 383. Termination of the office of Mohunt, 383. Renunciation of office, 384. Subsequent disability of the Mohunt whether occasions forfeiture ? 384. Removal of Mohunt, 386. Private and public Mutts, 388.

Lectures X, XI and XII.—Enforcement of religious and charitable trusts ; remedies for breach of trusts ; suits and judicial proceedings in relation thereto .. 392

Remedies for breach of charitable trust in English Law, 392. Visitors, 393. Charity Commissioners, 394. Board of Education, 394. Control exercised by ancient rulers in India over religious endowments, 395. Similar rights of control asserted by the British Government, 396. Bengal and Madras Regulations, 397. Religious Endowments Act, 1863, 399. Property of the endowment does not vest in the committee appointed under the Act, 401. Jurisdiction of civil courts still exists in spite of the appointment of committee, 402. Section 13 of the Act and the liability of the trustees to keep accounts, 403. Section 14 and the right of suit, 403. Charitable Endowments Act, 1890, 406. The Charitable and Religious Trusts Act, 1920, 406. Section 92 Civil Procedure Code, 409. Object and scope of section 92, 411. Conditions to be fulfilled in a suit under section 92, 412. Existence of public trust, 413. Constructive trust and trustee

CENTRAL LIBRARY

de son tort, 414. Public trust—what it means ? 418. Whether section 92 applies when the trust is both public and private ? 421. Suit under section 92 must proceed on an allegation of breach of trust or the necessity of having directions from the court, 423. Whether strangers to the trust can be made parties to a suit under section 92 ? 424. Section 92 limited to suits claiming reliefs mentioned in the section, 429. Suit under section 92, a representative suit on behalf of the public, 431. Interest, what it means ? the interest of worshippers, 436. The consent of the Advocate-General, 440. Removal of a trustee, 441. Grounds of removal, 443. Appointment of new trustees, 446. Vesting property in the trustee, 449. Directions of accounts and enquiries, 449. Accounts on the basis of wilful default, 452. Settling a scheme, 453. *Cy-pres* doctrine, 455. Alteration or amendment of the scheme, 455. Order amending a scheme whether appealable ? 457. Decision under section 92 and *res judicata*, 458. Award of costs in section 92 suits, 458. Suit against alienee of trust property, 459. Remedies in case of breach of trust of private, religious and charitable endowments, 460. Persons entitled to sue in case of private or family debutter, 461. Right of suit of founder and his heirs, 461 ; of prospective shebaits and members of the family, 462. One co-shebait can sue another in case of breach of trust, 462. Removal of a shebait, 462. Recovery of property wrongfully alienated, 463. Framing a scheme in a private debutter, 464.

APPENDIX

Orissa Religious Endowments Act, 1941 468
Madras Religious Endowments Act, 1951 505

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Errata

Page	66	.. line	3	..	read section '18' instead of '19'
Page	78	.. line	1	..	read "will" instead of "wil"
Page	125	.. line	6	..	read "specified" instead of "sepcified"
Page	125	.. line	23	..	read "public" instead of "upblic"
Page	141	.. line	21	..	read "section" instead of "setton"
Page	145	.. line	38	..	read "right" instead of "righ"
Page	149	.. line	28	..	read "maxim" instead of "maxin" z
Page	274	.. line	3	..	read "order XXXII" instead of "order XXII"
Page	326	.. line	30	..	read "owns" instead of "owes"
Page	399	.. line	33	..	read "provisions" instead of "urovisions"
Page	427	.. line	8	..	read "it" instead of "if"
Page	441	.. line	2	..	add "not" after "would"

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LECTURE I.

The fundamental ideas underlying religious and charitable trusts in Hindu Law.

Religious and charitable trusts are found to exist, in some shape or other, in almost all the civilized countries and their origin can be traced primarily to the instincts of piety and benevolence which are implanted in human nature. The form and nature of these trusts undoubtedly differ according to the spiritual and moral ideas of different nations, and even among the same people, the ideas are seen to vary—often to a considerable extent—at different stages of their religious and political history. Thus Imperial Rome under the Christian Emperors was dissimilar in many respects to Pagan Rome, and the religious and charitable institutions in England undoubtedly took a different shape when she abjured Catholicism and became Protestant. The popular Hindu religion of modern times is not the same as the religion of the Vedas though the latter are still held to be the ultimate source and authority of all that is held sacred by the Hindus. In course of its development the Hindu religion did undergo several changes, which reacted on the social system and introduced corresponding changes in the social and religious institutions. But whatever changes were brought about by time—and it cannot be disputed that they were sometimes of a revolutionary character—the fundamental moral and religious ideas of the Hindus which lie at the root of their religious and charitable institutions, remained substantially the same ; and the system that we see around us can be said to be an evolutionary product of the spirit and genius of the people passing through different phases of their cultural development.

It would be my endeavour, to discuss, with you, in course of these lectures, the different aspects of the law relating to religious and charitable trusts among the Hindus as it is administered at the present time in India.

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Paucity of materials on the subject of endowments in Hindu Law.

It strikes one as somewhat anomalous that notwithstanding the existence of richly endowed Hindu temples and religious institutions all over India, the subject of endowment should receive a most niggardly treatment in the hands of the Smriti writers. It is not one of the eighteen topics of litigation into which the sphere of substantive law is divided by Hindu jurists and commentators ever since the days of Manu. There is no statement of law, directly on the subject, in any of the Smriti works. Stray passages having only an incidental bearing on the matter occur here and there in the midst of dissertations on other topics, and no workable law could be constructed on the basis of scanty materials like these. Some of the later commentators, indeed, have paid a little more attention to the subject than what their predecessors did and they have drawn largely on the Pouranic literature ; but what they talk of is not law but religion and rituals and it is often difficult to extricate any legal rule from a mass of religious rites and ceremonies.

The meagreness of original authorities on the subject of endowments did not escape the notice of early English writers on Hindu Law, and Sir T. Strange in his chapter on "Property" observed as follows —"Of the property of religious institutions, and of that partaking of *Jura Regalia* something will be incidentally said in parts of this work in which a reference to them connects with other subjects of discussion; materials concerning them, that are accessible, being too scanty to admit of any extended investigation" (a). One explanation for this somewhat unusual state of affairs was suggested by Sir Gurudas Banerjee, J. in course of his judgment in Girijanand V. Sailajananda (b). The learned Judge expressed the opinion that "the high reputation for purity and piety of character justly enjoyed for the most part by the priestly class in ancient India, who had the management of the shrines was deemed a sufficient safeguard against breach of duty so as to render detailed rules to regulate their conduct un-

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(a) Strange's Hindu Law, Vol. I p. 32
(b) I. L. R. 23 Cal. 645 at p. 650.

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necessary." I would be inclined to think that in such matters, a good deal was left to be regulated by unwritten law or usages, whose authority and binding force are regarded by orthodox Hindus as scarcely inferior to written Smriti texts. Manu lays it down as one of the duties of the King, to enquire into the particular laws and usages of classes, communities and societies, and adhere to them, if they are not repugnant to the laws of God (c). Having regard to the extreme conservatism of Hindu society it could be fairly expected that the people who were in charge of administering the benefactions did not go against the traditions and usages which grew up in respect of the same. It is also not unlikely that the pious donors, who only hoped to acquire spiritual merit by making gifts, were generally indifferent as to the further use and employment of the properties given, and it was only in extreme cases when the waste or maladministration was of a scandalous character that the interference of the ruling authority was sought for.

Law of Hindu religious & charitable trusts mainly a Judge made law.

As the materials to be found in the writings of the Hindu Law givers on the subject of religious and charitable trusts are extremely scanty, it goes without saying that the law which is found administered today in India, is to a large extent the creation of Judges. Ever since the establishment of British Courts in India, an array of eminent Judges both English and Indian brought their legal learning and strong common sense to bear upon this delicate and somewhat abstruse branch of Hindu law, and attempted to evolve out of the few cryptic writings of ancient Hindu sages, a sufficiently well developed body of rules and principles. This development was in a sense necessitated by the demands of the time and the prevalent social and moral ideas, and it cannot be denied that it was influenced to a great extent by the notions and principles of English law. How far this judge-made law fits in and harmonises with the original Hindu ideas, I will attempt to examine as I proceed with these lectures. In this first and introductory lcture it is my intention to analyse the fundamental ideas of religious and chari-

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(c) Manu, Chap. VIII verse 41.

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table trusts as they were conceived by the Hindus, from the standpoint of modern Jurisprudence. For this purpose it would be necessary to study the nature and history of Hindu religious and charitable institutions from the earliest times downwards and to examine, at the same time, the scattered sayings of Hindu sages and commentators, with a view to discover, if possible, from what appears to be merely moral precepts or discussions of ritualistic observances, germs of true legal ideas.

Religious & charitable trusts —what do they mean.

But before we proceed with this investigation you should try to have a clear idea as to what is meant by the expression "Religious and charitable trusts" in its proper juristic sense. For this purpose a little excursion into the fields of English and Roman law might be necessary. A trust would be denominated a religious or charitable trust, if it is created for purposes of religion or charity. Two things therefore require to be considered in this connection viz. (1) what are religious and charitable purposes ? and (2) what is a trust ?

Now religion is absolutely a matter of faith with individuals or communities, and it is not necessarily theistic (e.g. Buddhism). All that we understand by religious purpose is that the purpose or object is to secure the spiritual well being of a person or persons according to the tenets of the particular religion which he or they believe in. This may imply belief in a future state of existence where a man reaps the fruits of his pious acts done in this world, and it may be connected with the idea of atonement for past errors of a man and that of making peace with his Maker.

By charity on the other hand is meant benevolence, and in its wide and popular sense it comprehends all forms of benefit, physical, intellectual, moral or religious bestowed upon persons who are in need of them (d). You will see later on that in English law the word 'Charity' has a technical meaning, and whether a purpose is charitable or not has got to be ascertained with reference to the preamble to the well known statute of Elizabeth (St. 43 Eliza. Ch. IV). The statute itself has been repealed with the excep-

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(d) For various meanings of the word 'charity' see Commissioner for Special purposes of Income Tax V. Pemsel 1891 A. C. 531.

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tion of the preamble which still remains (e). In England religious trust forms part of and is included in charitable trust, which is synonymous with public trust. You will also find that there are statutes in England like the Mortmain and Charitable Uses Acts of 1888 and 1891, which impose restrictions of various sorts upon dedication of property to charitable uses. These things however are purely local and accidental and cannot be regarded as an essential part of the juristic conception of religion or charity. Each system of law has its peculiarities depending upon its particular social conventions, its political necessities and religious usages, and Hindu law also has its own characteristics as we shall see presently.

Definition of Trust.

Let us now come to the other point and see what is meant by a 'trust'. The conception of 'trust' in its technical sense was devised by the Chancery Courts in England, which as Courts of Conscience attempted to supply the deficiencies of the English Common Law, by administering what were known as principles of equity and natural justice. These principles were imported to a large extent from the Roman Civil law, and the procedure adopted by the Equity Courts was modelled on that of the Ecclesiastical tribunals, the principal feature being the writ of *Subpoena* by which an unscrupulous defendant who could not be touched in the common law courts was compelled to appear before an Equity Judge and made to carry out his orders, the proceeding being entirely one *in personam*. Lewin in his well known treatise on the Law of Trusts defines 'Trust' to be a "confidence reposed in some other, not issuing out of the land, but as a thing collateral, annexed in privity to the estate of the land, for which cestui que trust has no remedy but by *Subpoena* in the Chancery" (f). This definition is not a happy one, and it has been criticised by many later writers on the subject including Underhill and Maitland (g). On the face of it, the definition is inadequate for it is applicable to real estates only, whereas there can be trust of personal property as well. The expression "some other" is

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(e) See 51 & 52 Vict. Ch. 42.
(f) Lewin's Law of Trust p. 11.
(g) Vide Underhill's Law of Trusts and Trustees—9th Edn. pp. 3-4 : Maitland Lectures on Equity, Lecture IV pages 43-44.

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positively misleading as the settlor himself can be one of the trustees, and moreover it is not a correct statement of law as it stands at present, the Court of Chancery no longer existing as a separate court in England.

Justice Story defines a trust "to be an equitable right, title or interest in property real or personal distinct from the legal ownership thereof" (h). This undoubtedly supplies one deficiency in Lewin's definition, but really it does not define trust at all ; what it describes is the estate or interest of the person in whose favour a trust is created.

As has been pointed out by Underhill (i) the definition of Justice Story is in one sense too narrow because a person can be a trustee without having a legal estate in the trust property ; in another sense however it is too wide for the definition would serve quite well for any other kind of equitable estate or interest and not merely the interest of a *cestui que trust*.

It will be seen that what these early writers aim at is to stress the distinction between legal and equitable estates. The trustee has the legal estate and is, in the eye of law, the owner of the trust property ; whereas the *cestui que trust* has the beneficial or equitable interest in it, which, prior to the Judicature Act, he could enforce only in a separate court.

Modern English writers on the law of Trusts do not however lay stress on the trustee having a "legal estate" or on his being the owner of the trust property. It is enough according to modern writers to constitute a person a trustee, if he has control over the trust property or can exercise any powers in respect to the same, and there is a duty on him to hold the property or exercise the powers for the benefit of other persons or for the accomplishment of some particular purpose (j). Thus in Halsbury's Laws of England (k) a trust has been defined as a confidence reposed in a person with respect to property of which he has possession or over which he can exercise a power, to the intent that he may hold the property

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(h) Story's Equity Jurisprudence 2nd Edn. p. 960.
(i) Underhill's Trust and Trustees p. 4 (9th Edition).
(j) Vide Maitland Lectures on Equity, Lecture IV, p. 44.
(k) Halsbury 2nd Edn. Vol. 33 p. 87.

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or exercise the power for the benefit of some other person or object.

Artificialities of English law not essential to conception of Trust.

You will see that the "Trust" in its origin was a highly artificial thing which had its foundation upon a dual system of law and a dual system of property which came into existence in England under peculiar political and historical conditions.

You could not possibly expect to find a trust in this form in the Hindu system. But the existence of dual ownership is not an essential ingredient in the conception of trust and if you take "Trust" in its broad and general sense as signifying a fiduciary relation under which a person in possession of or having control over any property is bound to use that property for the benefit of certain persons, or specified objects, obviously there are trusts in Hindu Law. A shebait in charge of a temple, or a mohant having control over a religious institution, would be a trustee in this general sense. As I have said just now, according to English lawyers, it is not essential that the trustee should be the owner of the trust estate, and the Judicature Act by abolishing the dual courts in England has really made the law much simpler and less technical than what it was before. If we ignore the distinction between legal and equitable estates which is an artificial distinction having its origin in purely historical circumstances, there will be only one kind of interest which is the real or beneficial interest in a property ; and in a trust property created for charitable purposes, the beneficial ownership may be regarded as vested in the human beneficiaries, or where the beneficiaries are indeterminate, in the religious or charitable purpose, or in the institution or foundation itself conceived of as a juristic entity and capable of bearing rights and duties. Whoever may be regarded as the beneficial owner in law, the trustee who is in possession of the trust property, and is entrusted with the duty of applying it for particular purposes, cannot be its owner, and the obligation can be enforced against him in such manner as the law lays down.

The ownership of the trustee in English law is only a nominal or formal ownership and even if this form is discarded it is still possible to conceive of a jural relation having all the essential ingredients of

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a trust proper. I may have to say something about the English law relating to charitable and religious trusts in a future lecture. At the present moment all that I desire to say is that there may be trusts in other than the English form.

A study of historical jurisprudence will convince us that different legal forms have been resorted to by different nations and even by the same people at different stages of their history, for the purpose of giving shape and effect to particular legal ideas, and the mistake we so often commit is to think that a particular legal form with which we are familiar at the present day is so self-evident and natural that it must have suggested itself to all other people and at all ages. No ancient nation could boast of a better and more perfect system of law than the Romans, and for the purpose of appreciating the Hindu conception of religious and charitable trust, it would be worthwhile enquiring what legal forms were adopted by the Roman lawyers for the purpose of giving effect to their ideas on this subject.

Religious and charitable institutions in Roman Law.

In Roman law properties dedicated to gods formed a species of *res Publicae* ; they were *res extra commercium* and lay outside the pale of private law altogether. They were not the objects of ownership or transfer, and no action could lie in respect of them in a court of law. They were protected by the State through some forms of administrative procedure. As Sohm observes in his Institutes of Roman Law, "In regard to *res sacrae* the idea was not that they were the private property of a Juristic person, e.g., the gods or some religious institution, but rather they were excluded from all private ownership" (1). In fact, as the same writer points out, the conception of a Juristic person did not make its appearance in early Roman Law. The old *Jus Privatum* was exclusively a law for the individual, and none but natural persons could be the bearer of legal rights and obligations. There were societies indeed like *Collegia* or *Sodalitates* but they could not hold property as Juristic persons. The properties intended for such societies had to be formally vested in an individual and treated as such.

The only Juristic person recognised in early

(1) 2nd. Edn.—Art. 37, p. 198.

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Roman Law was the State or *Populas Romanus*, but it was a public and not a private person, and all its transactions were governed not by private law but by *Jus Publicum*.

The idea of a corporate body as a new subject of rights and duties distinct from all its members was fully recognised in Rome during the Imperial period. Towards the end of the Republic a system of municipal governments was introduced in Rome, and the municipalities were conceived of as legal persons competent to hold their properties like private persons. After the example of Municipalities other lawful societies were also recognised to have proprietory capacity for purposes of law. Finally the Roman State in the form of the "Fiscus" came to be regarded as a sort of private Juristic person though it enjoyed many privileges which were denied to ordinary corporate bodies (m). What is relevant for our present purpose is that with the growth of the idea of Juristic personality in Imperial Rome, important developments took place with regard to the law relating to religious and charitable endowments.

In the early Empire, we find that certain specified deities such as Tarpeian or Capitoline Jupiter, Ephesian Diana and Gallic Mars, to whom the privilege had been specially given by a *Senatus Consultum* or Imperial constitution, might be instituted heirs under a testament (n). It is difficult to say who was thought to be the actual owner of the property. Buckland thinks that it was probably the State, as the administration was carried on by Magistrates and not by the temple priests (o). After adoption of Christianity by the State, Emperor Constantine authorised gifts by will to the Christian church. All church properties were contemplated as belonging to the church as a whole, though the ownership was a sort of *Eminent domain* and in each community the church property was regarded as a separate Patrimony. It was administered by the Bishop and Oeconomus for the ownership was supposed to reside in the entire religious group (p).

(m) Vide Sohm's Institute of Roman Law, 2nd Edn. pp. 195-199.
(n) Rattigan on The Roman Law of Persons p. 214.
(o) Buckland "A text book of Roman Law" p. 177.
(p) Ibid.

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"Under the Christian Emperors", says Rattigan, "the institution of a saint or the deity as heir was held to vest the property in the church ; and Justinian (530 A.D.) decided that the institution of Jesus Christ as heir was to be understood to indicate the church of the testator's domicile ; of an archangel or martyr, the church dedicated to such saint in the testator's place of residence, and if no such church existed in the latter place, then to the church so dedicated in the metropolis of the province ; if there be many so dedicated, the one to which the testator had shown preference in his life time, and in default of such the poorer one received the benefit of such bequest" (q).

Thus the church was a Juristic person, *par excellence*, under the Christian Emperors, and as Christianity was the religion of the State the church was really a State Institution. The theory of Roman Law was that the privileges of a juristic person could be enjoyed by State Institutions, and by those private institutions only to which recognition was accorded by the State. Property given or left to a church by a private individual to be applied for charitable purposes e.g. for hospitals, alms houses, orphanages etc., vested ordinarily in the church of the place where the donor resided, though in theory it belonged to the church as a whole ; and if the endowment was of a permanent character the Bishop set up an establishment for proper management of the same. A further step was taken in the development of the law on the subject when charitable institutions were allowed to be made by private individuals without reference to the church.

"During the later Empire" says Sohm"—from the fifth century onwards—foundations created by private individuals came to be recognised as foundations in the true legal sense, but only if they took the form of *Pia Causa* i.e., were devoted to 'pious uses' only, in short if they were charitable institutions. Whenever a person dedicated property whether by gift intervivos or by will—in favour of the poor or the sick, or prisoners or orphans, or aged people he thereby created *ipso facto* a new subject of legal

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(q) Rattigan "Roman Law of Persons" p. 215

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rights—the poor house, the hospital and so forth and the dedicated property became the sole property of the new subject—it became the property of the new Juristic person whom the founder had called into being. .....A *pia causa* did not require to have juristic personality conferred upon it. According to Roman Law the act—whether a gift intervivos, or testamentary disposition whereby the founder dedicated property to charitable uses—was sufficient without more to constitute the *Pia causa* a foundation in the legal sense, to make it in other words a new subject of legal rights" (r).

This indeed is a very advanced conception. It allowed a private individual to create a Juristic person in the shape of a foundation without any authorisation from the State. Some writers are of opinion that as *pia causa* was an ecclesiastical institution, it was really a part of the church and was hence included in the concession given to the latter. This view is negatived by the fact that it was possible for the founder to give directions regarding the administration of the fund without any interference by the church although the Bishop had a general right of supervision (s). The better view seems to be that as gifts creating charitable institutions were authorised by the State, the State sanction to clothe such institution with the capacity of a juristic person was impliedly given. Thus so far as charitable endowments are concerned, the Roman Law recognised two kinds of juristic persons. One was a corporation or aggregate of persons who owed its juristic personality to State sanction. A private person might make over property by way of legacy or gift to a corporation already in existence and might at the same time prescribe the particular purpose for which the property was to be employed e.g. feeding the poor, or giving relief to the sick or distressed. The receiving corporation would be in the position of a trustee and would be legally bound to spend the funds for the particular purpose. The other alternative was for the donor to create an institution or foundation himself. This would be a new juristic person which depended

Two types of charitable endowments in Roman law.

(r) Sohm—Institutes of Roman Law p. 208.
(s) See Buckland's Roman Law pp. 178-179.

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for its origin on nothing else but the will of the founder provided it was directed to a charitable purpose. The foundation would be the owner of the dedicated property and the administrators would be the trustees bound to carry out the object of the foundation.

I will now proceed to analyse the Hindu conception of religious and charitable trust, from such materials as we possess, and it would be interesting to enquire as to whether the Hindu system recognised any of the ideas which were so well known to the Romans.

Hindu conception of religious & charitable gifts— *Istha* and *Purtta*

Hindu religious and charitable acts have been from the earliest time classified under two heads viz., *Istha* and *Purtta*. The two words are often used conjointly and they are as old as the Rigveda. The compound word *Istha-Purtta* has been retained in the writings of all Brahminical sages and commentators down to modern days, and although the connotation of these two expressions was extended to some extent in course of time the fundamental ideas involved in them remain practically the same. By *Istha* is meant Vedic sacrifices, and rites and gifts in connection with the same ; *Purtta* on the other hand means and signifies other pious and charitable acts which are unconnected with any *Srauta* or Vedic sacrifice. The meaning of these two expressions has been discussed elaborately by Pandit Pran Nath Saraswati, in his Tagore Law lectures on the Hindu Law of Endowments, and for my purposes I will cull a few texts to which reference has been made by the learned author in this connection.

In the Rigveda, which is the earliest record of Aryan culture *Istha* and *Purtta* are described as the means of going to heaven. There is a verse in the 10th Mandala of the Rigveda (t) where the seer describes the dead man as going to the highest heaven, along with the *pitris*, as a result of the *Istha* and and *Purtta* works done by him in this world. The celebrated commentator Sayana in commenting on this passage, says that by *Isthapurtta* are meant gifts bestowed in *Srauta* and *Smarta* rites. The same commentator in explaining these very words which

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(t) 10th Mandala—14, 8.

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occur in Taitiriya Aranyaka (u) observes that the word *Istha* denotes Vedic rites like Darsa, Purnamash etc. and *purtta* means *Smarta* works like tanks, wells, etc. The two texts of Manu, where the merit of *Istha* and *purtta* is extolled and which have been referred to by subsequent commentators stand as follows:—

"Let each wealthy man continually and sedulously perform sacred rites (Istha) and consecrate pools and gardens (Purtta) with faith since these two acts accomplished with faith and with riches honestly gained, procure an unperishable reward."

"If he meets with fit objects of benevolence, let him constantly bestow gifts on them, both at sacrifices and consecrations (Istha & Purtta), to the best of his power and with a cheerful heart" (v).

Following a text of Sankha quoted by Hemadri, Pandit Pran Nath Saraswati, makes the following enumeration of *Istha* works : viz. (1) Vedic sacrifices etc. (2) gifts offered to priests at the same, (3) Preserving the Vedas, (4) Religious Austerity, (5) Rectitude, (6) Vaiswadev sacrifice and (7) Hospitality (w). The Purtta works not only signified such works of public utility as excavation of tank, wells, etc. but included all acts which either conferred some kind of benefit on those who were in need of it, or were regarded as meritorious from the spiritual or religious point of view. From the numeorus Smriti texts bearing on the point, Pandit Pran Nath Saraswati has compiled a list of *Purtta* works which are generally recognised as such by Brahminical writers. These are : (1) gifts offered outside the sacrificial ground (2) gifts on the occasion of an eclipse, solstice and other special occasions (3) the construction of works for the storage of water, as wells, tanks etc. (4) the construction of temples for the gods, (5) the establishment of procession for the honour of the gods, (6) the gift of food and (7) the relief of the sick (w[1]).

The list is by no means exhaustive ; dharmasalas, rest houses, *mutts* for the residence of ascetics,

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(u) Taitiriya Aranyaka Pro. X. Anu. 1, 6.
(v) Manu IV 226 & 227.
(w) P. N. Saraswati—Tagore Lectures on Endowment p. 21.
(w[1]) Ibid 27.

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planting of trees and dedication of groves are also *Purtta* works mentioned by the commentators. From the list of *Istha* and *Purtta* works given above it will be noticed that construction of a temple for the worship of an idol is an instance of *Purtta* work, whereas hospitality is regarded as one of the *Istha* acts. The reason is that the construction of temple has no connection with a Vedic sacrifice ; it is a thing of later origin and hence is regarded as a *Smartha* act of piety. Worship of guests on the other hand is one of the sacrifices which is enjoined on every householder by the Vedas. Hospitality therefore is associated with *Srouta* or Vedic rites and comes under the category of *Istha* works.

No distinction between religion & charity in Hindu Law.

In the Hindu system there is no line of demarcation between religion and charity. On the other hand charity is regarded as part of religion. The Hindu religion recognises the existence of a life after death, and it believes in the law of Karma according to which the good or bad deeds of a man produce corresponding results in the life to come. All the Hindu sages concur in holding that charitable gifts are pious acts *par excellence*, which bring appropriate rewards to the donor, and the seer in the Rigveda says in clear accents that "He who gives alms goes to the highest place in heaven" (x). According to the Smriti writers charity is the supreme virtue in this (Kali) age. Thus Manu says "In the *Creta* the prevailing virtue is declared to be in devotion, in *Treta* divine knowledge, in the *Dwapara* holy sages call sacrifice the duty chiefly performed ; in the Kali liberality alone" (y). The same verse occurs in Parasara (z). It may be mentioned here that charity is not only regarded by Brahminical writers as a means of securing happiness in after life, it is also one of the forms of expiation prescribed for those who have committed sinful acts. "By forgiveness of injuries" says Manu "the learned are purified ; by liberality those who have neglected their duties" (a). As we have already seen, the expression *Purtta* is not confined to secular charities alone, but includes various

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(x) Maxmuller 'Chips from a German Workshop,' Vol. 1 p. 46.
(y) Manu I. 86. (z) Parasara Institutes 1, 22.
(a) Manu V. 107.

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acts (e.g. erecting a temple) which are regarded as meritorious only from the religious point of view. The sole distinction between *Istha* and *Purtta* lies in the fact that the former relates to Vedic sacrifices which the latter do not. As the Vedic sacrifices fell into disuse and became confined to comparatively few persons, the *Purtta* works became more popular, particularly as they were open to the Sudras as well. This is why later Smriti writers extol the merits of *Purtta* works and regard them as the means of securing salvation (b). Even as regards Vedic sacrifices it may be pointed out, as has been observed in the Chandogya Upanishad, that "the offerings to the God are really offerings for the benefit of all human beings" (c). The position therefore is that in the Hindu system, religion and charity overlap each other and do not admit of any differentiation. They are both integral parts of 'Dharma' or the rule of righteousness which the Hindu sages regard as the upholder of the entire fabric of the universe, both in its physical and moral aspects.

The enumeration of *Istha* and *Purtta* works as given in the Smritis would give us an idea of the religious and charitable gifts that were recognised and encouraged by the Hindu sages. The fact however that a man performs sacrifices or makes gifts to a pious Brahmin either on the alter of the sacrifice or on some other auspicious occasion would not create a religious or charitable trust. Such a trust could arise only when a property or fund is dedicated or set apart for any particular object of religion or charity. Many of the *Istha* works mentioned above are synonymous with moral virtues and others are exhausted as soon as the sacrifice is completed or the gift made. There is no obligation imposed on any person to do or continue to do something for the accomplishment of a particular purpose. Similarly as regards *Purtta* works only when an institution is founded for the benefit of the poor or the distressed, or a temple or monastery is dedicated to pious purposes or when somebody is entrusted with the duty of performing any pious act, then a trust properly speaking can come

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(b) Vide Yama, "Heaven is attained by Istha, by Purtta one enjoys emanicipation".

(c) Chandogya Upanishad Chap. V, pr. 24. K 2-5.

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into being. According to Devala gifts are of four classes, viz. they may be (1) *Dhruba* or eternal such as *Prapa* or the construction of places for supplying water, or *Arams*, rest houses and the like ; (2) *Ajasrika* or daily charity ; (3) *Kamya* or gifts made with a particular object; and (4) *Naimittika* or occasional gifts made on auspicious occasions (d). Of these only *Dhruba* gifts can ordinarily create trusts or endowments in perpetuity.

No temple or monastic institutions existed in Vedic age.

It is difficult to say to what extent the charitable and religious ednowments as we see in modern times existed in the early Vedic period. The earliest Vedic literature which is known by the name of *Samhitas* throw very little light on this point. It seems fairly certain that at this period there were no temples for worship of idols as we find in subsequent time, and an institution like the *mutt* or monastery of later days was also unknown. "The religion of the Vedas" says Maxmuller "knows of no idol. The worship of idols in India is a secondary formation, a later degradation of the more primitive worship of ideal gods" (e). Dr. Bollensen on the other hand is of different opinion and according to him the Vedic Rishis not only assigned human forms to their gods, they represented them in a sensible manner. It is said by the learned author that "From the appellation of the gods as *divonaras* (men of sky) or simply *naras* (men) and from the epithet Nr pes (having the form of man) we may conclude that the Indians did not merely in imagination assign human forms to their gods, but also represent them in a sensible manner" (f).

No idol worship in Vedic times.

It seems to us that the view taken by Prof. Maxmuller is right. There is a difference of opinion amongst scholars as to whether the religion that is embodied in the Vedas was at all polytheistic. A number of gods indeed are named but there are various passages in Rigveda which expressly declare that the various gods are only different names of that "which is one". Maxmuller calls the religion, henotheism. The gods to whom the hymns of the Rigveda are addressed are idealised beings who represent the beneficient and radiant powers of nature e.g. sun,

(d) See J. C. Ghosh—Law of Endowment p. 17.
(e) Maxmuller—Chips from a German Workshop, Vol. 1 p. 38.
(f) Journal of the German Oriental Society, XXII 587 ff.

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air, earth, sky, dawn, etc. But the Vedic seers had from the beginning a glimpse of the infinity behind these finite forces as is shown by the conception of 'Aditi' the mother of the Gods which, as Maxmuller says, was the earliest name invented to express the infinite. They soon realised the existence of one among many. The different gods were now spoken of as different aspects of the same entity which transcends all the manifestations of nature but yet lies immanent in them all. But whatever the early form of religion might have been, one thing is certain, that Vedic religion at no time was idolatorous. "In this respect" says Ragozin, "the Aryans of India were in no wise behind their brethren of Iran : nature was their temple ; they did not invite the deity to dwell in houses of men's building, and if in their poetical effusions they described their Devas in human forms and with fanciful symbolical attributes, thereby unavoidably falling into anthropomorphism, they do not seem to have transferred it into reproduction more materially tangible than the spoken word—into the eidolon—which becomes the idol (g).

The strongest argument in support of this view is furnished by the form of worship prevalent in the Vedic age. It was quite different from the modern form of adoration of gods which is described in the *Purans* or *Agamas*. The worship detailed in the hymns of Rigveda consisted of offerings, prayers and praises in honour of the gods. The offerings were mainly of clarified butter which were poured on the sacred fire and of fermented juice of *Soma* plant which was sprinkled either on the fire or on *Kusa* grass, some quantity always remaining for the worshippers themselves. Whichever deity was invoked, it was the sacred fire which was to carry the oblation to Him. This is why *Agni* or fire was called *Hutavaha* (the carrier of oblation) "a messenger between the two worlds" or the 'two races' (of gods and men), the mediator through whom alone constant intercourse between gods and men was kept up (h).

There are detailed rules in the Vedic literature regarding the construction of the alter and the vari-

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(g) Ragozin—Vedic India p. 133.
(h) Vedic India—p. 158.

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ous forms of oblation including animal sacrifice, and there is description also of the different kinds of priests who were to preside over different parts of the sacrifice ; but there was no other visible symbol of worship except the sacred fire and no place for performing the sacrifice except the alter which existed in the householder's own residence, or was constructed temporarily when sacrifices on a big scale were contemplated.

Absence of monastic institutions in Vedic period.

There is also no mention of monastic institutions in the Vedic literature. According to the Vedic *Grihya Sutras* which regulated the life of man there were the institutions of four *Asramas* prescribed for all persons belonging to the twice born castes. Man's life was divided according to this scheme into four Asramas or stages. The first stage was of the *Brahmachari* or student who was to live in the house of his preceptor and study the Vedas living a life of utmost austerity and discipline. In the second stage he married and became a house-holder or *Grihastha* and his duty was to perform the religious and secular works that were prescribed for this stage of life. In the third which was the *Banaprastha* stage, he was to live the life of a recluse, and in the last stage he became a *Jati* or ascetic. Ordinarily therefore a man after finishing his period of studentship would marry and become a house-holder, and compulsory celibacy was never encouraged or sanctioned by the Vedas. A man however who was not inclined to marry might remain what is called a *Naisthik Brahmachari* or perpetual student and might pursue his studies living the life of a bachelor all his days. Although the Vedic religion was not in any sense a monastic religion, yet it cannot be denied that the germs of monachism were there (i). It afforded the example of a saintly mode of life and if we could conceive of the *Naisthik Brahmacharis* or the ascetics in the fourth stage of life forming groups or societies of some sort and framing disciplinary rules for their guidance, we get all the elements necessary to constitute a monastic order. Whether this thing actually happened, we are not in a position to say. Monastic institutions were firmly established in India from the

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(i) Vide Kern's Manual of Buddhism p. 73.

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time of Buddha. But we hear of various sects of wandering ascetics even before Buddha was born. Thus the Jaina sects of *Nirgranthas* and *Ajivakas* are frequently mentioned in Buddhist literature, though both of these were heretical sects and did not believe in the authority of the Vedas (j).

"Propatha" or rest house in Vedic time.

As I have said above, hospitality was one of the principal virtues enjoined by the Vedas. There are passages in Rigveda which go to suggest that there were probably institutions like *Sarais* and resting places in the Vedic period. A hymn addressed to the *Maruth* (winds) speaks of refreshments "being ready at the resting places on the roads" (k). This, says Wilson, indicates the existence of accommodation for the use of travellers. "The Propatha" observes the learned author "is the Choultry of the south of India, the *Sarai* of the Mahomedans, a place by the road side where the traveller may find rest and provision" (l). It is true that in the passage in which they are named the refreshments are said to be provided for the *Marut* or the winds but in this, as in the case of the cities of the *Asuras* the notion must have been derived from what really existed ; *Propathas* or Choultries were not likely to be pure mythological inventions ; those for the *Maruts* must have their prototypes on earth (m).

The first period of Vedic literature was the period of Samhitas or collection of hymns and prayers, and this was followed by that of Brahmanas which are treatises in prose dealing with ceremonials and various other theological matters. The third and the final stage was the period of Suttra literature which consisted of aphoristic compositions dealing with Vedic rituals on the one hand and customary laws and domestic duties on the other. There were several kinds of Suttras. The *Srauta* Suttras dealt mainly with rituals ; the *Grihya* Suttras or house aphorisms related to household ceremonies, while the *Dharma* Suttras were concerned with legal and social usages and hence are regarded as the oldest source of Hindu Law. The Suttra literature according to Prof. Mac-

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(j) See Rhys. Davids Buddhist India p. 146.
(k) Rigveda Asthaka, 4 Adhaya, Anubak 23 § 9.
(l) Wilson's Rigveda, Vol. 2 p. 151.
(m) Wilson's Rigveda, Vol. 1 Introduction p. XVI.

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donell was developed between 500 to 200 B.C. (n). Prof. Maxmuller places it slightly earlier viz. 600 to 200 B.C. (o).

Temples during Suttra period.

Although there is no mention of temples in the *Samhita* of the Vedas it seems fairly clear that temples in some form or other were known during the Suttra period. Even in one of the Brahmaṇas known as *Adbhuta Brahman*, the words देवायतन and देवप्रतिमा occur (p). But the age and authority of this work are uncertain, and it is a book purporting to deal with bad omens and protents. The evidence furnished by the Goutama Dharma Suttra is however more definite. Of all the Dharma Suttras this is supposed to be the oldest (q), and we may take the date of its composition to be roughly about 500 years before Christ. Goutama mentions a temple of God in more than one place in his Dharma Suttra. It is stated to be one of the objects which destroys sin (r). Again while laying down the rules of प्रदक्षिन or Perambulation, Gautama says that temples of gods should be passed to the right (s). These passages indicate clearly that there were temples at the time when the Suttra literature was composed, though we have no means of knowing what images, if any, were worshipped in them. Another passage in Gautama Dharma Suttra is worth noticing : while enumerating the various things which cannot be partitioned Gautama says "Water for pious uses and sacrifices and prepared food shall not be divided" (t). The expression used is योगक्षेम, which has been differently interpreted by different commentators. Viramitrodaya takes it to mean those who perform sacrifices and charitable works (u). The interpretation given by Mitakhara seems to be the best and it stands as follows:—"The term Yogacshema is a conjunctive compound resolvable into *Yoga* and

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(n) Vide Macdonell's History of Sanskrit Literature Ch. 2, pp. 28, 36.
(o) Cambridge History of India. p. 149.
(p) Vide P. N. Saraswati—Hindu Law of Endowment p. 38.
(q) This is the opinion of Dr. Bulher, Dr. Jolly and Prof. Macdonell.
(r) Gautama Chap. 19, sec. 14.
(s) Gautama Chap. 9, Sec. 66.
(t) Muller's S. B. E. Vol. 2 p. 306.
(u) Viramitrodaya, Chap. 7, Sec. 2.

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Cshema. By the word *Yoga* is signified cause of obtaining some thing not already obtained, that is, a sacrificial act to be performed with fire consecrated according to the Veda and the law. By the term *Cshema* is denoted an auspicious act which becomes the means of conservation of what has been obtained ; such as the making of a pool or a garden, or the giving of alms elsewhere than at the altar. Both these, though appertaining to the father, or though accomplished at the charge of the patrimony, are indivisible ; as *Laugacshi* declares : "The learned have named a Purtta conservatory act *Cshema*, and a sacrificial one *Yoga* ; both are pronounced indivisible ; and so are the bed and the chair" (v). If this interpretation is correct, it is proved beyond doubt that benefactions like wells, gardens and charitable dwellings like Dharamshalas etc. were in existence at the time when Gautama composed his Dharma Suttra. We do not know how these endowments were created or maintained at this period, but this much is certain that the idea of grants of land for charitable and pious purposes was already well established.

Religious and charitable institutions during the Buddhist period.

The next period in the history of religion and culture in India is the period of Buddhism. Buddhism, as you know, came in as a protest against the ritualism and sacrifices of the Vedas. It was a non-theistic religion, and Buddha in course of his numerous dialogues never hinted at any intelligent First Cause of the universe. The fundamental principles of the Buddhist religion are expressed by what are known as four Aryan truths, and which postulate *firstly* that there is evil and suffering in the world ; *secondly* that the suffering has a cause ; *thirdly* that there is a way out of this suffering and *fourthly* that to suppress the evil one must know the right way (w). The origin of misery as manifested in old age, sickness, sorrow, pain and despondence is traced back through a long chain of causation to *Avidya* or ignorance, and the remedy for the evil lies in *Nirvan* which is a blissful state of beatitude when all suffering is absolutely and for ever at an end. The way to Nirvan

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(v) Colebrooke's Mitakhara pp. 275-6.
(w) Kern's Manual of Buddhism p. 46.

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lies through a high state of moral purity, and a good deal of spiritual exercises, meditation and contemplation.

The religious and social institutions of the country could not but be affected by the ideas which were promulgated by the new doctrine, and the results were manifested in certain ways which I will notice briefly at this stage.

Rise of monasticism. Buddhist Bihars & Sangharams.

The first and most important development which took place under the influence of Buddhism was the establishment and growth of monastic institutions in India. Buddhism was essentially a monastic religion. The Buddhist order or congregation of monks was known by the name of *Sangha* and this Sangha together with *Buddha* and *Dharma* (sacred law) constituted the three jewels (त्रिरत्न) which were the highest objects of worship among the Buddhists. A novice at the time of his ordination had to declare in solemn form that he had taken refuge in *Buddha*, *Dharma* and *Sangha*. The congregation or Sangha was an well organised institution at the time of Asoka whose reign commenced from about 274 B.C. and it had a voluminous code relating to disciplinary rules and conduct known by the name of *Patimoksha* (x). The Buddhist name for a *mutt* or monastery was *Vihara* or *Sangharama*, and *Vihar* says Kern, denotes not only a monastery or abode of monks but a temple as well (y). The Chinese travellers have spoken of numerous *Vihars* and *Sangharams* all over the country which were occupied by Buddhist monks, as well as of a large number of *Chaityas*, *Stupas* and other structures held sacred by the Buddhists.

It appears that originally the Buddhist monks had no fixed place of residence, and were more or less wandering ascetics. The Buddhist order however in imitation of similar custom prevalent among other heterodox sects introduced the practice of retirement during the rainy season. All the monks were forbidden to travel during this period and had to make arrangements for some sort of residence. The story goes that a rich merchant of Rajgriha desired to erect buildings for the residence of the followers of

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(x) Vide Kern's Manual of Buddhism p. 74.
(y) Ibid page 81.

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Lord Buddha, to which the latter gave his consent, saying "I allow you, Oh monks, abodes of five kinds viz. *Vihars*, *Addhyogas*, *Towers*, *Harmyas* (stone houses with flat roof) and crypts". On getting this permission from the Lord the merchant, it is said, finished sixty dwelling houses in one day (z). The story, as Kern points out, is obviously absurd, but it shows that residences of several kinds mentioned above were actually in occupation of Buddhist monks at the time when *Vinaya Pitaka* was composed. The first instance of dedication of a dwelling place to the Buddhist Sangha was probably made by King Bimbisar, when Buddha after attainment of enlightenment came to Rajgriha to preach the new doctrine. The dedication was made of a bamboo garden known as *Venuban* in the formal way by pouring water over the hand of Buddha who accepted the gift as the representative and head of the congregation (a).

It is worthy of note that the practice of making gift by pouring water over the hands of the donee is a time honoured custom, which has been recognised by all the Smriti writers and is regarded as the proper method by the Hindus even at the present day. Another historical instance of dedication of a Vihar to the Buddhist Sangha was the gift of the famous *Jetvana Vihar* by *Anath Pindika*, the most celebrated of Buddha's lay disciples. Anath Pindika had purchased the *Jetvana* Park at Sravasti and built a splendid monastery upon it with a private chamber for Lord Buddha, and separate cells for the monks. On the day when the Lord approached the city he was received with great pomp and on entering the precincts of the monastery, he was asked by the merchant : "What O Lord shall I do with this Vihar ?" The reply was : 'give it to the Sangha present and future.' And Anath Pindika pouring water over the hands of Buddha pronounced the solemn formula of donation. The Master accepted the gift with thanks and celebrated in stanzas the advantages of a monastery (b). With the spread of Buddhism over different parts of India the number of monasteries

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(z) Ibid.
(a) Kern's Manual of Buddhism p. 25.
(b) Ibid p. 28.

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dedicated to the Sangha considerably increased and during the reign of Asoka Buddhism occupied almost the same position as Christianity did under Emperor Constantine.

Now the Buddhist Sangha was undoubtedly a juristic person and was capable of holding property in the same way as a private person could. As you have seen above, the ordinary formalities of gift were observed by the donor when he wanted to dedicate any property to the Buddhist congregation, and the gift was accepted on behalf of the Sangha by its head or representative. The property did not become the private property of the ostensible donee, nor could it be said to belong jointly to all the monks who were members of the congregation at that particular time. It was the property of the congregation itself which could not but be deemed to be a separate entity for this purpose and which continued to exist even if all its members died out or were replaced by other people. As a corporation the *Sangha* enjoyed a sort of immortality and was consequently fit to hold property for ever. Whoever the ostensible donee might have been, the benefit of the endowment belonged to the entire fraternity of the Buddhist monks.

The *Vinaya Pitaka* contains elaborate rules regarding the conduct of businesses in a monastery. The members who were thought fit for particular kinds of work were generally entrusted with the same, and the appointment was made by the Sangha itself. As the Sangha became a huge organization in course of time, it appears that something like the institution of Parish was introduced in the Buddhist system. This institution owed its origin to the quarrelsome attitude taken by a batch of six monks who habitually raised difficulties in regard to various matters connected with the disciplinary rules of the monks. It was one of the injunctions of Buddha that the *Patimokkha* was to be recited by every monk, twice every month, on the *Uposoth* (sabbath) day in the presence of the community. What the six monks did was to recite the text in the presence of their own companions. The question was raised how far did the community extend? This was settled by a prescription that it would extend as far as one's place of living. Still the question arose as to how

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far did a place of living extend? This led to the demarcation of the boundary of each local community with reference to permanent land marks like mountains, rivers etc. After the land marks were determined, a monk had to bring the matter up formally before the Sangha and get them ratified (c). It seems therefore that on the gift of a Vihar to the Buddhist congregation it was used and occupied by the monks who belonged to that particular Parish or locality, though the ownership vested in the entire *Sangha* whose directives were binding on the local authorities.

Charitable works for men and animals in Buddhist period.

Compassion to all living beings was an essential feature of the Buddhist religion, and as a result of that, various kinds of charitable institutions came into existence during the Buddhist period. The more popular forms of charity were the planting of trees for shade, the digging of wells at short intervals along the road and the establishment of hospitals for both men and beasts. In the Pillar Edict of Asoka we have the following inscription. "On the roads too banian trees have been planted by me to give shade to man and beast ; mango gardens have been planted and wells dug at every half kos ; rest houses too have been made here and there for the comfort of men and beasts" (d). In the same Edict we find mention of the appointment of officers to superintend charities and regulate the affairs of the Sangha and of other sects, and they had jurisdiction apart from the ordinary magistrates.

Image worship an indirect result of Buddhism.

The only other thing in connexion with Buddhism which I would ask you to note is that although in the religion preached by the Buddha, there was no place for worship of God, yet the respect that the Buddhists paid to relics and sacred structures and later on to the image of Buddha himself, ultimately paved the way for image worship in India. Buddhism was absolutely silent on the existence of any Divine Being as the originator of the universe. The highest spiritual beings according to Buddhists were the Buddhas, many of whom had preceded Sakyamuni, and the devas or gods were given a very low position, they

(c) Kern's Manual of Buddhism p. 82.
(d) Vide Asoka's Rock Edict No. 2. See also Dr. R. K. Mukherjee's "Asoka" p. 186.

CENTRAL LIBRARY

being regarded as inferior to *arhats* or adepts, who were in the last stage of the path leading to Nirvana. There was no worship of gods in the early Buddhist religion, but there were relics of various kinds and sanctuaries which were regarded as objects of worship. The corporeal relics of Buddha were objects of the highest veneration and the celebrated tooth relic was seen by the Chinese traveller Fia Hian at Anuradhapore in Ceylon nearly a century after it was brought there. All objects which had served the purpose of the Buddha, or were associated with his life or teachings in any way, attracted respect from the Buddhists, e.g. the alms bowl of Buddha, or the holy tree under which Buddha obtained salvation. According to Kern the general name for a sanctuary in Buddhist time was *Chaitya*, a term not only applicable to building but to sacred trees, holy spots, monumental stones and religious inscriptions as well, whereas *Stupa* was a structure usually resembling a grave mound which was erected generally, though not always, on sacred relics (e). There is no evidence of the worship of any Buddha image in the early period of Buddhism nor even in the time of Asoka. It came into existence at about the first century B.C. (f). Along with the representation of Buddha the images of the previous Buddhas who had lived before Sakyamuni were gradually introduced. After that came a new phase in the Buddhist religion through the rise of Mahayanism (the great vehicle) which is described as the northern school of Buddhism. Mahayanism though existing from before, came into prominence at about the first century A.D. It advocated the worship of *Bodhisatwas* like *Avolokiteswar* and *Manjusri*, and introduced the images of five *Dhany* Buddhas together with their consorts (who were described as *Taras*), and also a whole host of other gods. Both the Chinese pilgrims saw large number of images of *Bodhisatwas* and Buddhist gods in various parts of India. It appears that side by side with rise of Mahayanism the worship of the Hindu gods and goddesses described in the Purans was becoming more and more popular, and for some time at least there

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(e) Manual of Buddhism p. 91.
(f) Ibid p. 95.

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was a sort of rivalry between the Hindu and Buddhist gods. By the end of the seventh century A.D. Buddhism was a decadent religion. It had lost its primitive purity and moral grandeur and had degenerated into Tantricism, associated with degraded forms of Yoga practices and secret rites having affinity to black art and other ignoble things.

Decay of Buddhism and Hindu revival.

The decline of Buddhism was followed by revival of Hinduism and from this time onwards the religious thoughts and ideas of the Hindus were shaped by a galaxy of religious teachers who can be said to have founded the various sects and sub-sects of the Hindu religion which exist even at the present day. It would be out of my province to deal with the religious history of the Hindus from the decline of Buddhism up to modern times or to dwell on the lives and teachings of the various saintly persons who built up the different schools of thoughts within the folds of Hindu religion. I will touch only a few general features of the Hindu renaissance which began at about the 8th century A.C. just to show in what way it influenced the growth of *Mutts* and *Temples*, the two religious institutions which in the language of Sir Subramania Ayyer stand supplementary to each other in the Hindu ecclesiastical system (g).

Sankaracharya and establishment of Mutts.

In the 8th century A.C. there was born in southern India, of Brahmin parents, a person by the name of Sankaracharya—a most remarkable person of whom any country and any nation could be proud. He was one of the world's greatest philosophers and spiritual leaders, a matchless dialectician and a born reformer. The theory of absolute monism which he propounded on the authority of the Upanishads is still a wonder and a puzzle to the philosophic world. He stood at the vanguard of the movement for revival of Hinduism and succeeded in combating and crushing the remnants of effete Buddhism and re-establishing the religion of the Vedas. Like all leaders of new thought he combined rare spiritual excellence with sound practical wisdom and foresight. What he tried to bring back, was not so much the rituals and sacrifices of the Vedic religion but the true philosophy of the Vedas as embodied in the Upanishads. Though opposed to Buddhism he

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(g) See Vidya Purna V. Vidyanidhi, 27 Mad. 435.

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was in favour of the ascetic ideal which Buddha had preached and it was he who introduced the Buddhist monastic institutions into the Hindu system. The *Mutts* or monasteries which he founded were all modelled on the Buddhist *Vihara* or *Sangharama* and many of the rules of his monastic order were taken from the Vinaya Pitaka. What he attempted to do was to give the institution a Vedic garb. As I have said already, life-long asceticism was not in accordance with Vedic doctrines and a person belonging to the twice-born caste was enjoined ordinarily to marry and become a householder after finishing his period of studentship. Exceptions were however made, as in the case of life-long students and there is a text in the Vedas which lays down generally that the moment a man develops nonattachment to the things of the world he is at liberty to renounce the world (यदहरेव विरजेत, तदहरेव प्रव्रजेत). This text was relied on by Sankar in support of the institution of monks which he founded and which is known by the name of *Dasnamis*. These *Sanyasis*, according to Sankar, represent the fourth stage or Asram of the Vedas. Though his own religion was highly philosophic, Sankar did not prohibit the worship of Pouranic gods, and many of his followers were known to be worshippers of Siva. For the purpose of strengthening and maintaining the doctrine of nondualistic philosophy which he preached, he established four mutts or monasteries at the four extremities of India viz. the *Jyotir Mutt* at Badrinath in the north, *Sarada Mutt* in Guzrat, *Sringeri Mutt* in south India and *Gobordhan Mutt* at Puri in east, and each one of them was placed in charge of one of his ascetic disciples. After the death of Sankaracharya many of his disciples, of whom some adopted his name, established mutts at various places and the original mutt at Sringeri was in course of time divided into six institutions.

Ramanuja and his order.

This practice of establishing Mutts or centres of theological learning, the heads of which were pious ascetics, was followed by other religious teachers who came after Sankar. Ramanuja is one of such great teachers who was born in the middle of the eleventh century A. C. and was the founder of the religious sect known as Sri Vaishnab, which counts its adherents

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by thousands at the present day. The philosophical theory propounded by Ramanuja is known as *Visista-dwaita* or qualified nondualism as distinguished from pure nondualism of Sankar. According to Sankar, there is no other reality except God and consequently the world or creation is nothing but an illusion. Ramanuja on the other hand tried to establish that God and His creation together constitute one integral whole and in that sense alone the creation is not different from the creator. Ramanuja advocated the worship of Narayan or Vishnu as the only symbol of God. He is said to have established seven hundred mutts of which a few only remain at the present day. One of them is at Melkottai which is called the Badarikasarm of the south.

Ramanuja.

Ramananda, reputed, though not correctly, to be one of the followers of Ramanuja, founded a different school of Vaishnavism. His followers worshipped Ramchandra as an incarnation of Vishnu and are known by the name of Ramaths. They abound in northern India and there are several Mutts of celebrity belonging to this order at Benares.

Rama-nanda.

Madhwa was another religious teacher who founded the sect named after him. This is a purely dualistic school which recognises an eternal distinction between man and his creator. The eight mutts at Udipi where Madhwa lived and which are all centres of Dwaita system of thought were admittedly established by him.

Madhwa.

Among other important Vaishnava sects we might mention those founded by Nimbarka, Ballavacharya and Srichaitanya Mahapravu of Bengal. Each one of these sects has its religious institutions on the model of the mutts founded by Sankara, though there are differences in the matter of initiation of disciples, succession to headship etc. which I shall discuss later on.

Nimbarka, Ballava-charya and Srichai-tanya.

The Sudra ascetics of southern India also followed the example of the Brahmans and the pious and learned amongst them actuated by "desire to disseminate religious knowledge and promote religious charity, established mutts in Tinnevelly, Madura, Trichinopoly, Tanjore and elsewhere" (h). The practice of esta-

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(h) Vide Giyana Sambandha V. Kandusami—10 Mad. 375.

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blishing mutts spread to other dissenting sects like Kabir Panthis, Jangamas and Lingayets of southern India, and they also constructed mutts or asthals for propagation of their particular tenets.

A detailed discussion of the characteristics and legal incidents of the different types of Mutts I will reserve for a future chapter. I will pass on to say a few words regarding the other important kind of Hindu religious institutions viz. temples and idols.

Idol worship in India.

It is difficult to say at what period of time idol worship was introduced among the Hindus. There is no mention of idols in the early Buddhistic literature. As I have said already there is some reference to idol in the Goutama Dharmasuttra but the age of the work is unknown and it does not specify any particular idol or idols. The gods that are popularly worshipped by the Hindus at the present day are for the most part Pouranic deities, descriptions of which occur in the various Puranas though in some parts of India e.g. Bengal, there is an admixture of Tantric rites in the form of worship. The Purans literally mean ancient legends. They constitute a class of epic literature, didactic in character which deal in various matters including cosmogony, the geneologies and exploits of gods, sages and kings, accounts of the different Avatars or incarnations of Vishnu, as well as the rites of worshipping gods by prayers, fasting, votive offerings, pilgrimages etc. (i).

The Puranas are supposed to be eighteen in number and all of them are attributed to the sage Vyasa. Their age is uncertain. But most of them seem to be post Buddhistic complilations. The Pouranic gods became popular in India after the rise of the northern School of Buddhism, and from the beginning of the fourth to the middle of the 6th century A. D. the Gupta Emperors did much towards the propagation of the Pouranic faith. The Purans are sectarian in the sense that some of them extol the merits of worshipping Vishnu, while many are in favour of Siva worship. The Upanishads which embody the philosophical truth of the Vedas describe Brahman or the Supreme being as "that from which all things are born, that by which when born they live and into

(i) Macdonell's History of Sanskrit literature, p. 299.

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which they enter at death." These creative, preservative and destructive functions or aspects of the divinity constitute the trinity of the Purana and are symbolised respectively by Brahma, Vishnu and Siva. The Purans say expressly that Brahma. Vishnu and Siva though three in form really constitute one entity and there is no difference amongst them except that of attributes. The reason is that each of the functions of creation, preservation and destruction implies the others and contains the others in a latent form. The worship of Brahma is not very popular, and I am not aware of any temple being dedicated to this creative deity. The images that are worshipped are generally those of Siva or Vishnu in their various forms or manifestations. The worship of Sakti or the female principle which is described as the consort of Siva in the different forms of Durga, Kali etc. is also popular and is the special feature of the Tantric system. Besides Siva, Vishnu and Durga, the other deities, who are generally adored by the Hindus, are Ganesh and Surya (Sun), and the numerous temples that adorn the various sacred places of the Hindus are dedicated for the most part to one or other of these five gods or *Pancha Debata* as they are called.

One thing you should bear in mind in connection with image worship viz. that the different images do not represent separate divinities ; they are really symbols of the one Supreme being, and in whichever name and form the deity might be invoked, he is to the devotee the Supreme God to whom all the functions of creation, preservation and destruction are attributed. In worshipping the image therefore the Hindu purports to worship the Supreme Deity and none else. The rationale of image worship is thus given in a verse which is quoted by Raghunandan :

"चिन्मयस्याद्वितीयस्य निस्कलस्याशरीरिण
साधकानां हितार्थाय ब्रह्मणो रूपकल्पना ।"

"It is for the benefit of the worshippers that there is conception of images of Supreme being which is bodiless, has no attribute, which consists of pure spirit and has got no second."

Temples and mutts are the two principal religious institutions of the Hindus. There are numerous texts extolling the merits of founding such institu-

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tions. In Sri Hari Bhaktibilash a passage is quoted from Narasingha Purana which says that "whoever conceives the idea of erecting a divine temple, that very day his carnal sins are annihilated ; what then shall be said of finishing the structure according to rule....He who dies after making the first brick obtains the religious merits of a completed Jagna" (j).

"A person consecrating a temple" says Agasta, "also one establishing an asylum for ascetics also, one consecrating an alms house for distributing food at all times ascend to the highest heaven" (k).

Other kinds of religious and charitable benefactions amongst the Hindus.

Besides temples and mutts the other forms of religious and charitable endowments which are popular among the Hindus are excavation and consecration of tanks, wells and other reservoirs of water, planting of shady trees for the benefit of travellers, establishment of *Choultries*, *satras* or alms houses and Dharamsalas for the benefit of mendicants and wayfarers, *Arogyasalas* or hospitals and last though not the least *Patshalas* or schools for giving free education. Excavation of tanks and planting of trees are *Purtta* works well known from the earliest times. I have already said that there is mention of rest houses for travellers even in the hymns of Rigveda. The *Propatha* of the Vedas is the same thing as *Choultrie* or sarai and the name given to it by subsequent writers is प्रतिश्रयगृह . They were very popular during Buddhist time. In *Dan Kamalakara* a passage is quoted from Markandeya Puran which says that one should make a house of shelter for the benefit of travellers ; and inexhaustible is his religious merit which secures for him heaven and liberation (l). There are more than one passage in the Puranas recommending the establishment of hospitals. "One must establish a hospital furnished with valuable medicines and necessary utensils placed under an experienced physician and having servants and rooms for the shelter of patients" (m). This text says further that a man by the gift of the means of freeing

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(j) Saraswati T. L. L. on Endowment, p. 43.
(k) Quoted in G. Shastri's Hindu Law, 8th Edn. p. 656-657.
(l) Mandalik's Hindu Law, Appendix 21, p. 334.
(m) Quoted from Nandi Puran. G. Shastri's Hindu Law, 8th Edition, pp. 656-657.

CENTRAL LIBRARY

others from disease becomes the giver of every thing. The founding of educational institutions has been praised in the highest language by Hindu writers. Hemadri in his *Dankhanda* has quoted a passage from Upanishad according to which gifts of cows, land and learning are said to constitute अतिदान or gifts of surpassing merit. In another text cited by the same author it is said that those excluded from education do not know the lawful and the unlawful ; therefore no effort should be spared to cause dissemination of education by gift of property to meet its expenses (n).

Legal ideas underlying the various endowments.

I will now attempt to trace the legal ideas underlying the various types of Hindu religious and charitable institutions and try to see how far elements of trust could be discovered in them. I have said already that the Smriti writers have said almost nothing on the subject of Endowment and the matter has only been incidentally touched upon in connection with enumeration of the duties of the King or the topics relating to gifts or resumption of gifts. The passage of Manu extolling the sanctity of *Istha* and *Purtta* works I have set out already. Yagnavalka in his *Acharadhya* or chapter on rituals has enumerated the various objects of charity and has specified, among others, "the affording of relief to fatigued guests, the service of sick men, the honouring of gods and providing asylum to travellers" (o). Narada has mentioned seven kinds of valid gifts, one of which is gift for religious purposes (p). According to Manu a man who breaks a temple can be killed without hesitation (q). Yagnavalka says likewise that such man could be impalled on a stake (r). Both Narada and Yagnavalka have laid down that a Sannyasi who becomes an apostate could be reduced to slavery by the king (s) ; and this suggests, though in a vague way, that the King had some sort of jurisdiction over religious bodies and institutions. None of these texts however are of much assistance to us for our present pur-

(n) Vide G. Shastri's Hindu Law, p. 659 (8th Edition).
(o) Chap. I, verse 209-210.
(p) Narada Chap. IV, sec. 8.
(q) Manu Chap. IX, 280.
(r) Yagnavalka Chap. II, §273.
(s) Yag : Chap. II, §183 and Narada S. B. E. vol. 33 p. 137.

CENTRAL LIBRARY

pose and they do not show how the intention of the donor who dedicated the property for religious purposes was given effect to.

Authority of the ruler over religious and charitable endowments.

It appears however that from very early times religious and charitable institutions in this country came under the special protection of ruling authority. In the celebrated Rameswar Pagoda case (t), it was pointed out by the Judicial Committee that the former rulers of this country always asserted the right to visit endowments of this kind to prevent and redress the abuses in their management. "There can be little doubt", thus observed their Lordships, "that the superintending authority was exercised by the old rulers." Mr. Nelson in his Madura Manual says "The principal Pagodas with their enormous establishments, their officiating priests etc. were managed by Dharma Karta or trustee and manager for life who as stated above was usually a monk and a Guru.....The Dharma Kartas held but little communication one with another and recognised no earthly superior except the king himself. Each was independent of all control and acted altogether as he pleased. This freedom led naturally to gross abuses and the king was compelled occasionally to interfere in the management of some of the churches" (u). Similarly West, J. observed in Manohar Ganesh V. Lakhmiram (v) "The State in its secular executive and judicial capacity habitually intervened to prevent fraud and waste in dealing with religious endowments." It is true as observed by Seshagri Ayyer, J. in Sitharam V. Sir S. Subramania Iyer (w) that there is little written authority regarding the jurisdiction of the Hindu kings over temples and endowments. But it seems that they were regulated by a sort of customary law which in the last resort had to be enforced by the king. In the chapter on "Transgression of compact" Yagnavalka lays down : "customary law as well as usages established by kings should be carefully upheld if not inconsistent with revealed law" (x). Upon this text Vignaneswar

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(t) 1. I. A. 299.
(u) Part III, Chap. 7 p. 162.
(v) 12 Bom. 247.
(w) 39 Mad. 700.
(x) Yagnavalka, Chap. II. 186.

CENTRAL LIBRARY

comments as follows : "Duties arising under any custom such as the preservation of the pastures for cow and of water and the management of temple (देवगृह) and the like should also be carefully observed without infringing the duties prescribed by the *Srutis* and *Smritis*" (y). Aparaditya and Mitramisra in commenting on the same passage lay down the rule in almost indentical manner. The same view finds expression in Sukra Niti where the duty of protecting endowment has been spoken of as one of the primary duties of the King (z). Thus the duty of the King to protect endowments rested on the basis of immemorial customs which were as sacred as written texts. Mr. Ganapati Iyer in his learned work on Endowments has referred to several historical documents which bear testimony to the fact, that the Hindu Kings always exercised supervision over temples and endowments (a). In a treaty between the Raja of Cochin and the Dutch East India Company there occurred the following statement : "As we are obliged to protect individually the temples at Palayanpur, Tiru Vallamale etc. we should do so in a regular manner." I have already said that in the time of Asoka there were officers employed by the King whose duty it was to exercise supervision over religion and charity and Kautilya in his Arthasastra also speaks of "Superintendent of Religious Institutions" (b). Mr. G. Iyer has further referred to an inscription of South India where it is said that "The people of Mayanadu, the Singalanadu, the Mudalanadu etc. shall protect these lands according to the rules of charitable institutions" (c). Thus it seems that the rules of charitable institutions were well known and well established—but as they did not rest on written texts it is difficult to say at the present day what these rules exactly were. West, J. gives a fairly accurate picture of the Hindu system when he says that "a Hindu who wishes to establish a religious or charitable institution, may, according to his law, express his purpose and endow

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(y) Gharpur's Mitakhara p. 329.
(z) Sukra Niti, Chap. IV, v. 9.
(a) Iyer on Hindu and Mahomedan Endowments pp. 23-25 (2nd Edn.).
(b) Sham Shastri's translation of Kautilya p. 304.
(c) Iyer p. 22.

CENTRAL LIBRARY

it, and the ruler will give effect to his bounty, or at least protect it so far, at any rate as is consistent with his own Dharma or conception of morality" (d).

Assuming now that the sovereign authority enforced or protected the intentions of the founder provided they were not *Contra bonos mores*, the question arises, what were the jural ideas underlying these benefactions ? If there was dedication of property for religious or charitable purposes which divested the donor of his ownership in the same, in whom did the ownership vest? And was there any idea of trust implied in these endowments ?

Essentials of dedication for religious & charitable purposes. Sankalpa & Utsarga.

Though the subject has not been properly discussed by any of the Hindu law givers, yet some light is thrown on it by the rules of dedication prescribed by Brahminical writers, with regard to different kinds of endowment. There are various works of this kind where the subject of gift or dedication has been elaborately discussed and mention may be made, among others, of *Danakhanda* by *Hemadri*, two works named *Purta Kamalakar* and *Dana Kamalakar* by Kamalakar Bhatta, *Pratistha Mayukha* of Nilkhanta and *Pratistha Tatwa* of Raghunandan. Mandlik has given an excellent summary of the various modes of dedication laid down by different authors in one of the appendices to his learned treatise on Hindu Law (e). In every act of dedication there are two essential parts: one of which is called *Sankalpa* or the formula of resolve, and the other *Utsarga* or renunciation. The ceremonies, as Mandilk points out, always begin with a Sankalpa, which after reciting the time of gift with reference to age, year, season, month etc. states what object the founder has in making the gift. *Utsarga* on the other hand completes a gift by renouncing the ownership of the founder in the thing given.

Different formulae of dedication in different cases.

In the case of delication of tanks the formula has undergone some alterations in course of time. In the earlier treatise the formula was "May the gods, the ancestors and men be satisfied." The words "and the rest" were added by Aswalayan after "men". In

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(d) Mohohar Ganesh V. Lakhmiram, 12 Bom. 247.
(e) Appendix II p. 331.

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later works the dedication is made in favour of all living beings (f).

Sankalpa in dedication of tanks and gardens.

The *Sankalpa* in dedication of tanks as prescribed by Utsarga Mayukha is as follows :—"I have given the water to all being in common, may all beings enjoy by bathing, drinking and swimming" (g). The ceremonies are much the same when trees, gardens and groves are dedicated.

Dedication of *mutts*.

In case of *mutts* there are different forms of dedication laid down by different authors. Kamalakar is of opinion that the gift can be made as usual by libation of water but if there is no particular recipient, e.g., when the mutt is to be used by ascetics in general, the offering water is to be thrown into a pot (h). In the Utsarga Mayukha, on the other hand, the gift of a mutt is described as a gift to a specified Brahmin or ascetic. There is thus a definite donee and the object is also specific (i). Lastly there is a passage in Kalika Puran quoted by Hemadri which goes to show that all mutts are to be dedicated to God Sankara (j). In other words this is to be regarded as a sort of public dedication, and the same idea is conveyed by certain text of Baraha Puran which describes in details how a mutt is to be gifted. The passage runs thus :—"A mutt should, by person having faith in the Sastras, be made three-storied or two-storied, consisting of different apartments, accommodated with places for meditation, for study, for burnt offering to consecrated fire and the like.... And he should endow a village or sufficient land for meeting the expenses, so that the ascetics and the travellers getting shelter (there), may receive sandals, shoes, umbrellas, small pieces of cloth, and also other necessary things. Thus having established an asylum beneficial to persons practising austerities, and also to other poor people seeking shelter, he should declare —"I am endowing this asylum—May He who is the support of the universe be pleased with me" (k).

(f) Saraswati T. L. L. on Endowment, p. 202.
(g) Mandalik, p. 336.
(h) Ibid pp. 334-335.
(i) Ibid, p. 336.
(j) Quoted in G. Shastri's Hindu Law p. 657 (8th Edition)
(k) Quoted in G. Shastri's Hindu Law p. 658 (8th Edition).

CENTRAL LIBRARY

Dharamsalas.

Dharamsalas, rest houses, and *satras* which are known by the name of प्रतिश्रय occupy a position analogous to that of mutts, and they are generally dedicated for the benefit of travellers and ascetics. The *Bahni* Puran thus describes the dedication of a प्रतिश्रय गृह: "Having caused to be made an auspicious and spacious asylum of burnt bricks, with strong pillars, and large compound, accompanied with distinctive mark, covered with plaster, guarded, equipped with comfortable apartments, and conferring endless religious merit—should dedicate to the Saiva and the Vaishnava ascetics. And having caused to be made an auspicious, spacious and beautiful house, furnished with good food, and equipped with pure drinking water, and possessed of an auspicious gate should dedicate it for the benefit of the poor and helpless and travellers" (l). All these are intended for the benefit of public or certain sections of the public and there is no specific donee by whom the gift is to be accepted.

Temples.

There are elaborate rituals prescribed by Smriti writers which have got to be observed when a donor wants to consecrate a temple and establish a deity in it. I may refer to some of these rituals in a subsequent chapter. It is enough to say here that according to *Pratistha Mayukha* the Sankalpa in case of establishment of an idol is of two kinds : one is for the accomplishment of a particular object which the founder may have in view ; the other is simply for the love of God. It is pointed out by Mandlik that according to *Pratistha Mayukha* there is no Utsarga in case of consecration of a temple except in special cases, and this means that there is no renunciation of the ownership of the founder as in other types of endowments (m). Other books on rituals however expressly lay down that before removing the image into the temple, the building itself should formally be given away to the deity for whom it is intended. The sankalpa or formula of resolve makes the deity itself the recipient of the gift and the usual formalities of gift are followed in this case also, and the gift is made by the donor taking in his hand

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(l) Ibid p. 659.
(m) Mandlik p. 339.

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water, sesamum, kusagrass etc. (n). According to Pandit Pran Nath Saraswati this is the ceremony which divests the proprietorship of the temple from the donor and vests it in the idol.

For the purpose of perpetuating the worship of the deity it is usual for the donor to make grants of land. Sometimes the gift of lands is made to pious Brahmins who receive the same as Brohmottar for carrying on the worship of the idol. This generally happens in the case of public temples and this is how the priests or *archakas* attached to particular temples came into existence. But gifts of lands are usually made to the deity itself. Hemadri in his Dankhanda has quoted texts from different Puranas extolling the merits of making gifts of land to Vishnu, Siva and other Gods. In the Vishnu Puran it is said that the donor of land for the erection of a temple attains the abode of the particular deity to whom the temple is dedicated. In the *Sivadharma* it is declared that he who dedicates to Siva cultivated land dwells in bliss in the *Rudraloka* as many kalpas as there are poles of land found on measurement. In the *Baraha Puran* the bestower of a skin of land to Vishnu is promised fortune and prosperity for seven births (o).

In whom does the property vest after dedication.

In all the types of endowment spoken of above we get the purpose of the founder clearly expressed in the *Sankalpa* while the *Utsarga* or renunciation divests the founder of his rights in the property dedicated. In whom then does the property vest ? When there is specific donee, as for example when the head of a monastic establishment accepts the gift on behalf of the congregation or order, the property might vest in the order or congregation itself as a juristic person and the head of the establishment for the time being would be entrusted with the duties of managing the property and spending its income for purposes of the congregation. As I have said already, the idea of an order of monks or fraternity of ascetics being clothed with a sort of juristic personality was not unknown in India. The Buddhist Sangha itself furnishes a most striking illustration. The gift of *Jetavana Vihar* to Buddha, was really a gift to the

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(n) P. Saraswati's T. L. L. on Endowment p. 127.
(o) P. Saraswati's T. L. L. on Endowment pp. 136-137.

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Sangha and Buddha accepted it on behalf of the Sangha as its head and representative. The same thing happens when a mutt is dedicated to a monk or Guru as representative of a particular order of Sanyasins. The idea of a corporate personality as distinct from that of the individual members was recognised by the Smriti writers. A *Gaṇa* or Guild according to Yagnavalka could hold property and employ agents (p). He gives a strict injunction to uphold the rights and privileges of corporate bodies even among heretics (q). It seems that the different corporate bodies had their own laws and regulations which were enforced by the King. The Buddhist literature and the inscriptions of the Second Century B. C. show clearly the flourishing condition of corporate life in ancient India (r). When a mutt is dedicated for the use of ascetics in general or those who belong to a particular sect, and there is no definite donee who accepts the gift, different considerations undoubtedly arise. The libation of water which is the indispensable ceremony in all gifts according to Hindu sages is in such cases poured over an earthen pot, or on the earth itself. This signifies that the gift or dedication is of a public character. Institutions like Choultris, Dharamsalas, Satras etc. occupy a similar position. In all these cases the beneficiaries are an indefinite number of persons who constitute either the entire public or certain sections of it. The question is, who becomes the owner of such property after the founder parts with his rights ?

Requisites of a valid gift according to Mitakhara & Dayabhag.

According to Vignaneswar gift consists in the relinquishment of one's own right and the creation of the rights of another, and the creation of another's right is completed on that other's acceptance of the gift and not otherwise (s). According to Dayabhag the gift is completed as soon as the donor relinquishes his rights in favour of the donee who is a sentient person (t). Donation according to Dayabhag is an act of the giver, and the concurrence of or acceptance by the donee is not essential. But even in Dayabhag although the ownership of the donor ceases to exist

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(p) Yagnavalka Chap. II. 187, 190. (q) Ibid 191-192.
(r) K. P. Jaysawal—Manu and Yagnavalka, p.212.
(s) Mitakhara Chap. III 5-6.
(t) Colebrooke's Dayabhag Chap. I, p. 21.

CENTRAL LIBRARY

in consequence of abandonment, yet if the particular person for whom the gift is intended does not accept it, then as all the conditions of abandonment are not fulfilled, the ownership does not terminate. The position is that the gift cannot take effect when no acceptance by a sentient donee is possible. How can therefore the gift take effect when the founder dedicates a *satra* for feeding of the poor, or an asylum for residence of ascetics, or when he builds a temple and dedicates it for the worship of an idol. In the first two cases there is no specific donee and in the third the donee is not a human being but a deity.

Not applicable to gifts for religious purposes.

The view of the Hindu Jurists seems to be that in case of gifts to a deity or for religious purposes no acceptance is necessary to complete the gift. The following observations of Sir Ashutosh Mukherjee, J. in Bhupatinath V. Ramlal (u) sums up the views of the commentators on this point. "It is clear from these passages", thus observes the learned Judge, "as well as from other passages from Sreenath, Achyutananda and other commentators on the Dayabhaga, that they understood the rule about the acceptance of a gift as a necessary condition for its validity as applicable to secular gifts alone. There is no foundation for the assumption that dedication to the deity or for religious purposes stands on the same footing". Thus renunciation or Utsarga by the donor is sufficient to complete the gift when the property is given to a deity or for religious purpose, and in such cases no acceptance by a sentient being is necessary. But the question starts up again, in whom does the property vest after dedication ? If it becomes *res nullius* and belongs to nobody, it can be appropriated by any person, even though he would incur sin by so doing, and the very object of the donor would be frustrated. It may be argued that even though the owner loses his proprietory right after dedication he may still retain custody and control of the thing dedicated. This argument is founded on the following passage of Viramitrodoy :—"But ownership, so far as protection is concerned does exist in the donor even when his ownership consisting of the power of disposition at pleasure had been withdrawn (by renunciation)

On whom does the property vest when there is no specific donee ?

(u) 10 C.I.J. 355 at p. 375, I.L.R. 37 Cal. 128.

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until the final accomplishment of the purpose of the donor, who seeks a certain merit according to precepts ; for the act imported by the word "Gift" will not be complete until the ownership of another has arisen. The ownership will in this instance (exist), in the same way as it does in the case of substances sacrificed, lest sin arising out of the prohibition about their being touched by prohibited (animal or person) should stick (to the sacrificer) ; in this way the possibility of a stranger appropriating a thing given and of the forbidden being precluded will not arise, although the ownership of another has not arisen. The practice of the learned in both cases in respect of protection is based on that (limited form of ownership)" (v). This obviously contemplates a temporary arrangement ; the donor is allowed the right of protection in respect of the thing given till the ownership of another arises. It does not support the view that the thing becomes *res nullius*. Ownership therefore must vest in somebody. As has been pointed out already, the Roman Law recognised the foundation or institution itself as Juristic person. Under the Roman Law an individual by dedicating property for a charitable purpose could bring into existence a foundation or institution which in law would be regarded as the owner of the dedicated property. A similar conception is present in the German "Stiftung" where a fund earmarked for a special purpose is deemed to be its own owner. There is no such conception in English Law which recognises only one class of legal persons viz. the corporations which are really personifications of groups or series of individuals, and are classified into corporation aggregate and corporation sole. Obviously neither a Hindu religious institution nor a Hindu idol can come within the scheme of artificial persons as framed and adopted by English Law. Mr. Justice West in his classic judgment in Monohar Ganesh V. Lakhmiram (w) pointed out that "the Hindu Law like the Roman Law and those derived from it recognises not only corporate bodies with rights of property vested in the corporation apart from its individual members but also juridical persons and subjects

Does property vest in the foundation as Juristic person ?

(v) Viramitrodoy 1, 67. Mandiik p. 337.
(w) 12 Bom. p. 247.

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called foundations". The religious institutions like mutts, choultries and other establishments obviously answer to the description of foundations in Roman Law. The idea is the same, namely when property is dedicated for a particular purpose the property itself upon which the purpose is impressed, is raised to the category of a juristic person so that the property which is dedicated would vest in the person so created. In the Hindu Debutter it seems that the position is slightly different and in such cases not the whole endowment but the idol which as an embodiment of a pious or benevolent idea constitutes the centre of the foundation, is looked upon as the juristic being in which the Debutter property vests. After all, juristic personality is a mere creation of law and has its origin in a desire for doing justice by providing as it were centres for jural relations. As Salmond says 'it may be of as many kinds as the law considers proper' and the choice of the corpus into which the law shall breathe the breath of fictitious personality is more a matter of form than of substance.

Can property reside in the aim or purpose ?

According to the principles of modern jurisprudence the bearer of a right must be a person. There is indeed a class of writers like Brintz, Bekker and Duguit who maintain that property may vest in and belong to an 'aim' or 'purpose'. They are however unwilling to give the aim or purpose the status of a juristic person. According to them, the maxim "No person, no property" is not a justifiable assumption and that property may not only belong to and be held by a person it may belong to an 'aim' or 'purpose' as well, without the purpose being recognised as a juristic person. The position is that they eliminate the "person" as the bearer of a legal right from their scheme altogether. As a theory this is undoubtedly opposed to the accepted principles of modern jurisprudence, and in practical results it is likely to create difficulties and complications of a rather serious type. Once the property goes out of the person and vests in the purpose or aim the whole thing is placed at the mercy of the state which can do whatever it likes with this masterless right and there remains no person entitled in law to enforce the intentions of the donor. On the other hand if the state regards the foundation or institution which aims at

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carrying out certain objects, a legal person, the latter acting through its agents can always enforce the right. This was precisely the conception of Roman Lawyers.

The scheme of Brintz, Bekker and others, though not a tenable scheme, certainly contains some important juridical truths. In the first place in the case of property dedicated to a particular purpose it lays stress on the purpose of the donor as the supreme factor which should be given the controlling hand in the management and administration of the property. At the same time these writers admit that a purpose or aim can not rank as juristic person in law, and this led them to adopt the untenable position that a right can remain without an owner. The innate practical sense of the Roman Jurists found a way out of this difficulty. They indeed were fully conscious of the fact that the purpose or intention of the founder was the primary thing in an endowment, but as purpose without any material basis could not figure as a legal person they personified the endowment itself which was dedicated for a particular purpose. Though these principles are nowhere expressly discussed by the Hindu Jurists, it seems that institutions like *mutts* and *satras* which were not gifted to any particular donee or fraternity of monks were regarded as juristic persons in Hindu Law to which the endowed property of these institutions belonged. With regard to Debutter, the position seems to be somewhat different. What is personified here is not the entire property which is dedicated to the deity but the deity itself which is the central part of the foundation and stands as the material symbol and embodiment of the pious purpose which the dedicator has in view. "The dedication to deity", said Sir Lawrence Jenkins in Bhupati V. Ramlal (x), "is nothing but a compendious expression of the pious purpose for which the dedication is designed". It is not only a compendious expression but a material embodiment of the pious purpose and though there is difficulty in holding that property can reside in the aim or purpose itself, it would be quite consistent with sound principles of Jurisprudence to say that a material object which

(x) 10 C.L.J. 355 at 369.

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represents or symbolises a particular purpose can be given the status of a legal person, and regarded as owner of the property which is dedicated to it.

The idol as a symbol and embodiment of the spiritual purpose is the juristic person in whom the dedicated property vests.

As you shall see later on the decisions of the Courts of India as well as of the Privy Council have held uniformly that the Hindu idol is a juristic person in whom the dedicated property vests. "A Hindu idol", the Judicial Committee observed in one of its recent pronouncements, "is according to long established authority founded upon the religious customs of the Hindus and the recognition thereof by Courts of Law, a juristic entity. It has a juridical status with the power of suing and being sued" (y). You should remember however that the juridical person in the idol is not the material image, and it is an exploded theory that the image itself develops into a legal person as soon as it is consecrated and vivified by the *Pran Pratistha* ceremony. It is not also correct that the Supreme being of which the idol is a symbol or image is the recipient and owner of the dedicated property. The idol as representing and embodying the spiritual purpose of the donor is the juristic person recognised by law and in this juristic person the dedicated property vests.

Deity owner in a secondary sense.

The discussions of several Hindu sages and commentators point to the conclusion that in case of dedicated property the deity is to be regarded as owner not in the primary but in the secondary sense. All the relevant texts on this point have been referred to by Sir Ashutosh Mukherjee in his judgment in Bhupati V. Ramlal (z) and I will reproduce such portions of them as are necessary for my present purpose.

Sulapani, a reputed Brahminical Jurist, in his discourse on *Sraddha* thus expresses his views regarding the proper significance of gift to Gods :—"In 'Donation' having for its dative case, the Gods like the Sun, etc., the term 'donation' has a secondary sense. The object of this figurative use being extension to it of the inseparable accompaniment of that (gift in its primary sense), viz. the offer of the sacrificial fee etc. It has already been remarked in the chapter on the *bratis* that such usage as *Devagram*,

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(y) Promotha V. Pradyumna—52 I.A. p. 245.
(z) 37 Cal. 128, 10 C.L.J. 355

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Hastigram, etc., are secondary." Sree Krishna in commenting on this passage thus explains the meaning of the expression *Devagram* : "Moreover the expression cannot be used here in its primary sense. The relation of one's ownership being excluded, the possessive case affix (in Devas in the term Devagram) figuratively means abandonment for them (the Gods). Therefore, the expression is used in the sense of "a village, which is the object of abandonment intended for the Gods". This is the purport. According to Savar Swami, the well known commentator on Purba Mimansa, Devagram and Devakhetra are figurative expressions. What one is able to employ according to one's desire is one's property. The Gods however do not employ a village or land according to their use.

These discussions are not free from obscurity but the following conclusions I think can be safely drawn from them :—(1) According to these sages the deity or idol is the owner of the dedicated property but in a secondary sense. The ownership in its primary sense connotes the capacity to enjoy and deal with the property at one's pleasure. A deity cannot hold or enjoy property like a man, hence the deity is not the owner in its primary sense ; (2) Ownership is however attributed to the deity in a secondary or ideal sense ; This is a fiction (उपचार) but not a mere figure of speech, it is a legal fact ; otherwise the deity could not be described as owner even in the secondary sense ; (3) The fictitious ownership which is imputed to the deity is determined by the expressed intentions of the founder ; the debutter property cannot be applied or used for any purpose other than that indicated by the founder. The deity as owner therefore represents nothing else but the intentions of the founder. Although the discussions of the Hindu Jurists are somewhat cryptic in their nature, it is clear that they did appreciate the distinction between the spiritual and legal aspects of an idol. From the spiritual standpoint the idol might be to the devotee the very embodiment of Supreme God but that is a matter beyond the reach of law altogether. Neither God nor any supernatural being could be a person in law. So far as the deity stands as the representative and symbol of the particular purpose which is indicated by the donor, it can figure as a legal person and

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the correct view is that in that capacity alone the dedicated property vests in it.

Ownership of tanks and trees after dedication.

The dedication of tanks and trees occupies in my opinion a somewhat different position. The water of a dedicated tank ceases to be private property according to Hindu idea and can be enjoyed not only by every human being but by every animate creature. According to Raghunandan the consecrator by relinquishing his rights makes the water of the tank common property like that of a river (a). There are certain writers who are of opinion that the dedicator himself cannot use the water of tank dedicated by him. Raghunandan however controverts that view and according to him the dedicator can use the water as a member of the public. The subsoil in a tank may remain with the owner if he chooses to retain his rights in it, but subject to this, a tank becomes public property and private ownership ceases altogether. There is no question here of the property vesting in a corporate body or any institution. As private ownership ceases with dedication the only duties that can still remain with the owner are the duties of preservation and repair. No question of administration of such dedicated property strictly speaking arises.

Administrators or managers of endowments are trustees in the general sense.

With regard to all other types of endowment it is necessary for the purpose of carrying out the intentions of the donor that somebody should be entrusted with the management or administration thereof. As was observed by Mukherjee. J. in Monohar V. Bhupendra, (b) in ancient times, except in cases of property dedicated to a brotherhood of ascetics, all endowments were administered ordinarily by the founder himself and after his death by his heirs. This was the case not only with regard to temples but also in respect of non-religious charitable institutions like choultries, Sadabratas etc. It was only in case of public temples that the practice of appointing shebaits was generally resorted to. But whoever may be the person in whom the duty of administration is vested, whether it is the shebait or *archaka* of a temple or the Mahant of a religious institution and

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(a) Vide Saraswati T.L.L. 205.
(b) 37 C.W.N. p. 29.

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whether or not such person is the heir of the original founder, he must be deemed to be in the position of a trustee with regard to the endowed property. As I have said already he may not be a trustee in the sense in which that expression is used in English law. To quote the language of the Judicial Committee in Vidyavarathi V. Baluswami (c) 'as in no case is the property conveyed to or vested in him he is not a trustee under the English law'; but it was pointed out by the Privy Council that in view of the obligations resting on him he is answerable as a trustee in the general sense. I have already pointed out that the word "Trust" in English law involves a highly technical idea which owes its origin to purely historical circumstances and of which no parallel exists in any other system of law. You will remember that the dual system of law and the dual courts in England have now ceased to exist and even according to English lawyers it is not necessary that the trustee must have the ownership or legal estate in the trust property. Once it is established that a person has got control over or is in possession of property which he is bound to hold for the benefit of particular persons or for the accomplishment of particular purposes, a trust in the general sense will come into being. The matter will be discussed more fully later on. I would only desire to point out that the Indian Legislature in enacting the Trust Act which defines 'Trust' in the same manner as in English Law has deliberately excluded from its scope the rules of law applicable to Hindu and Mahomedan religious endowments, while on the other hand in the various laws relating to these endowments passed from 1810 A.D. downwards, the word 'trust' has been used in the general sense mentioned above.

Thus far I have given you a general idea of the different forms of religious and charitable trusts amongst the Hindus and attempted to show how they were shaped by the beliefs and ideas prevalent at different periods of their religious and cultural history. I have tried further to express the legal ideas underlying them in the language of modern jurisprudence. In the lectures that you will follow, I will discuss

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(c) 48 I.A. p. 302.

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with you in details the law on the subject that is administered at the present time in India. I will ask you to bear in mind, what I have said at the outset, that the law of the present day is to a large extent judge-made law, and though the Judges purported to proceed on the basis of indigenous materials they were very greatly influenced by the ideas of English law, particularly, that branch of it which was administered by the Equity Courts in England. In one sense this was unavoidable. You know how scanty are the rules of Hindu Law on the subject of endowment. When no definite rule of law is available, the abiding direction has been given to Indian Courts to decide cases according to equity, justice and good conscience and it is well known that these rules of equity and justice are to a large extent principles of English Law. As West, J. observed in re. Kahandas Narrandas (d), "If the Court is called on to give effect to a trust in a given case it looks to the Hindu Law of property to determine the estate of the trustee, but with reference to the duties of the trustee and the rights of beneficiaries it is governed by the rules of English equity." Where there is a text of Hindu Law directly on the point the Privy Council has ruled firmly that nothing from any foreign source should be introduced into it, nor should courts interpret the text by application, to the language, of strained analogies (e). When the indigenous resources fail altogether, resort to the English Law cannot be avoided, but here again the Judicial Committee uttered the warning that the narrower peculiarities of English Law should not be imported into the Hindu System.

Legislation on the subject of Religious & Charitable trusts.

The Indian Legislature has not uptil now taken up the work of making a comprehensive legislation on the subject of Hindu religious and charitable trust. There are a number of enactments both general and local which aim at controlling the management and administration of public religious and charitable endowments, and provide remedy for prevention and redress of abuses in their management. After the establishment of British Government in this country it was discovered that the income of many endow-

(d) 5 Bom. 154.
(e) Bhyah Ram Singh etc. V. Bhyah Ugur Singh—13 M.I.A. 373.

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ments both Hindu and Mahomedan was misspent and misappropriated by the persons who were in charge of the same. The British Government asserted its right of supérvision over the endowed properties which were exercised by the previous rulers and in 1810 a Regulation was passed in respect to the Province of Bengal under which the general superintendence of all religious and charitable endowments mentioned therein was vested in the Board of Revenue. Similar Regulations were passed for Madras and Bombay Presidencies in the years 1817 and 1827 respectively. Later on it was thought that the connection of a Christian Government with Hindu and Mahomedan religious endowments was not expedient and by Act XX of 1863, the British Govenment divested itself of the charge and control of these institutions and placed them under the management of their respective creeds. Under the Act of 1863 a system of committee was devised to whom were transferred the powers vested in the Government for the appointment of managers, trustees and superintendents; rules were enacted to ensure proper management and to empower the superior courts in the districts to take cognizance of allegations of misfeasance against the managing authority (f). This Act was amended by Act XXI of 1925. In the Civil Procedure Code of 1877 a definite section was introduced viz. section 539, under which a suit could be instituted in case of any alleged breach of any express or constructive trust created for public, religious or charitable purposes, by the Advocate General or with his consent, by two or more persons, having an interest in the Trust, in the principal Civil Court of the district where the trust property was situated, for appointment of a new trustee and for various other reliefs specified in the section. This section was later on amended and in this amended form it stands as section 92 of the present Civil Procedure Code. In 1890 the Charitable Endowments Act (Act VI of 1890) was passed and this provided for the vesting and administration of property held in trust for charitable purposes not of a religious nature. The only other Act which is applicable throughout India and which was passed to secure

(f) See Vidyavarathi V. Balusami—48 I.A. 302.

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more effectual control over the administration of charitable and religious trust is Act XIV of 1920. As the preamble shows, the object of this enactment was to provide facilities for the obtaining of information regarding trusts for public purposes of a charitable or religious nature, and enable the trustees to obtain directions of a court on certain matters and also to make special provisions for the payment of expenditure incurred in certain suits against the trustees of such trust. This Act has been further modified by a later Act viz. Act XLI of 1923.

Of the local or provincial Acts the earliest is that of the Bombay Presidency of the year 1863. This was merely declaratory of existing common law and did not contain anything new. A most drastic piece of legislation on the subject is the Madras Religious Endowment Act of 1925, which was subsequently re-enacted and passed as Act II of 1927, there being some doubt as to the validity of the Act of 1925. The object of the law is to ensure efficient administration of Hindu religious endowments in the Madras Presidency. The Central Provinces Religious and Charitable Trusts Act was passed in 1937 with the object of better management and administration of religious and charitable trusts in the Central Provinces. One characteristic feature of the Act is the appointment of Local Committes for management and administration of Public trusts of a religious or charitable nature, the gross income of which is not less than Rs. 500 a year. The latest Provincial legislation of this kind is that passed by the Orissa Government in 1939 (Act IV of 1939). In this introductory lecture I will do no more than barely enumerate these Acts in their chronological order. Their contents would be referred to wherever necessary as I proceed with the discussions.

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LECTURE II.

Essentials of religious and charitable trust under Hindu Law.

Having given you an outline of the fundamental ideas underlying religious and charitable trusts in the Hindu system, I propose now to take you to the various aspects of the law on the subject as it is administered at the present day in India. I will begin with a discussion as to what are the essentials of a valid religious or charitable trust under Hindu law. In order that a proper and legally enforceable trust of this description may be created, it is essential in the first place, that the object or purpose of the trust must be a valid religious or charitable purpose according to the rules of law by which the Hindus are governed at the present day. It is necessary in the second place that the founder or settlor should be capable, under Hindu law, of creating a trust in respect of the particular property which is the subject matter of trust. The third requirement is that the settlor should indicate with sufficient precision the purpose of the trust and the property in respect of which it is made, and the trust must also comply with the requirements of law as regards the form in which it is to be made. The last element is that the trust must not be opposed to the provisions of any law for the time being in force, an infringement of which makes it void or voidable in law. I will take up these four topics one after another.

Essentials of a valid religious or charitable trust.

Charity—what it means.

The expression "charity" or "charitable purpose" does not admit of a rigid definition. For the purpose of conveying its legal sense, one can at the most enumerate its various aspects or characteristics, as they have been recognised by the law of a particular country.

In India, our courts of law are inclined more or less to look to the decisions of English courts for guidance in those matters where the indigenous authorities are scanty or insufficient. It would not be improper therefore if I begin my discussion with a short resumé of the English law on the subject.

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Meaning of charity in English law.

The word "charity" has acquired a technical meaning in English law, which is somewhat different from its popular meaning. In popular language again "charity" is used both in a limited as well as in a wider sense. In its restricted sense "charity" is synonymous with relief of poverty and a charitable purpose consists in relieving poverty (a). "I think", said Lord Bramwell in Commissioners for the Special Purpose of Income Tax V. Pemsel (b), "a charitable purpose is where assistance is given to the bringing up, feeding, clothing, lodging and education of those, who from poverty or comparative poverty stand in need of such assistance." Lord Herschell was probably inclined to accept the larger meaning of the word "charity" when he said in the same case that even in its popular conception charitable purpose is not limited to the relief of wants occasioned by lack of pecuniary means. "Many examples, may, I think, be given" thus observed his Lordship "of endowments for the relief of human necessities which would be as generally termed charitable, as hospitals or alms houses where nevertheless the necessities to be relieved do not result from poverty in its limited sense of lack of money....I think that the popular conception of a charitable purpose covers the relief of any form of necessity or destitution or helplessness which excites the compassion or sympathy of men and so appeals to their benevolence for relief" (c). But charity in its legal sense has neither the wider nor the restricted meaning that is attributed to it in ordinary language. "The legal meaning of charity is neither dependent upon nor coterminous with its popular sense" (d). If one examines the large mass of Judicial decisions on the point, the conclusion would be irresistible that while on the one hand the legal meaning of charity embraces within its scope various cases which could not be deemed charitable in the ordinary sense, yet on the other hand many objects are excluded which are popularly regarded as charitable.

(a) Baird's Trustees V. Lord Advocate—15 Sess. Cas. 4th Ser. 682.
(b) (1891) A. C. 531 at p. 543. (c) (1891) A. C. at p. 571-572.
(d) Per Lord Macnaghten in Commissioners of Income Tax V. Pemsel (1891) A. C. at p. 581.

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Law of charity in England based upon the Statute of Elizabeth.

The foundation of the law of charitable uses in England is the Statute of Elizabeth (43 Eliz. Ch. 4). The object of the Statute was to provide a new machinery for the reformation of abuses in regard to charities but in the preamble a list of charities was given, "so varied and comprehensive that it was the practice of courts to look upon it as a sort of index or chart" (e). The Statute itself was repealed in 1888 by the Mortmain and Charitable Uses Act, but the preamble was expressly preserved. The enumeration of charitable uses as given in the preamble is not considered to be exhaustive, it is rather regarded as illustrative, and the rule is that "those purposes are charitable which the Statute enumerates or which by analogies are deemed to be within its spirit or intendment" (f).

The charities mentioned in the preamble to the Statute are as follows :—

The relief of aged, impotent, and poor people ; the maintenance of sick and maimed soldiers and mariners, schools of learning, free schools, and scholars of universities, the repair of bridges, ports, havens, causeways, churches, sea-banks and highways ; the education and preferment of orphans ; the relief, stock or maintenance for houses of correction ; marriages of poor maids ; supportation, aid and help of young tradesmen, handicraftsmen and persons decayed ; the relief or redemption of prisoners or captives ; and the aid or case of any poor inhabitants concerning payment of fifteens, setting out of soldiers and other taxes. It will be seen that the Statute comprises many things e.g. repair of bridges, ports, harbours, causeways etc. which are objects of benefit not to the poor only, but to the entire community consisting of both rich and the poor.

Different classes of charity.

Lord Macnaghten in his celebrated judgment in the case of Income Tax Commissioners V. Pemsel (g) laid down that the charitable purposes which come within the language or spirit of the Statute of Elizabeth could be grouped under four heads, to wit :—(1) relief of poverty, (2) education, (3) the advancement

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(e) Per Lod Macnaghten in Commissioners of Income Tax. V. Pemsel (1891) A. C. at p. 581.
(f) Vide Morice V. Bishop of Durham—9 Ves. 405.
(g) (1891) A. C. 531 at p. 583.

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of religion, (4) other purposes beneficial to the community not coming under any of the preceding heads. All purposes falling within these divisions are *prima facie* charitable, provided they are of a public nature, that is to say, when the object is to benefit the community or some part of it, and not merely particular private individuals or a fluctuating class of private individuals pointed out by the donor (h). Commenting on this definition of Lord Macnaghten, Russell, J. said in Re. Hummeltenberg (i) "no matter under which the four classes of gift may *prima facie* fall, it is still in my opinion necessary (in order to establish that it is charitable in the legal sense) to show (1) that the gift will or may be operative for the public benefit, and (2) that the trust is one, the administration of which the court itself could, if necessary, undertake and control."

Distinction between public and private purpose.

The line of distinction between a public purpose and which is not public is extremely thin, and is practically incapable of definition. Tudor in his 'Charities' thus sums up he principles deducible from the cases on the subject (j) : "If the intention of the donor is merely to benefit specific individuals, the gift is not charitable, even though the motive of the gift may be to relieve their poverty or accomplish some other purpose in reference to those particular individuals which would be charitable if not so confined ; on the other hand, if the donor's object is to accomplish the abstract purpose of relieving poverty, advancing education or religion or other purpose charitable within the meaning of the Statute of Elizabeth, without reference to any particular individuals and without giving any particular individuals the right to claim the funds, the gift is charitable."

Relief of poverty.

Thus gifts to the poor generally or gifts to particular classes of poor persons are charitable ; but gifts for the benefit of specific individuals as for the children of the donor's tenantry or persons living in a certain street, or forming the members of a certain religious community are not charitable, even though the express purpose of the donor was to relieve

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(h) Halsbury's Laws of England 2nd Edition, Vol. IV p. 109.
(i) (1923) I Ch. 237. (j) Tudor on Charities, p. 12 (5th Edn.).

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poverty (k). On the other hand, trusts for relief of the poor of a particular town or parish, or widows and orphans of a particular place, or for the blind residents of a particular district, or for the poor clergymen and seamen of a particular place have been held to be charitable (l). Trusts for the benefit of poor relations are charitable if they are not limited to the statutory next of kin (m). In Bristow V. Bristow (n) where the testator left money for the relief of the poor "on my little estate in Suffolk" the gift was held to be charitable, although if the gift had been solely for the purpose of benefitting the estate it would not have been charitable.

Similarly with respect to trusts for education and religion it is not necessary that they should be meant exclusively for the poor—the only thing required is that there must be a public purpose, something tending to the benefit of the community.

Educational gifts.

The advancement and propagation of education and learning in any part of the world and increase of knowledge among men are charitable purposes (o). Thus gifts for the establishment and support of schools of learning, or for the benefit of colleges at Universities, making provisions for school masters, bequests for the foundation of a scholarships, fellowship or lectureship, founding prizes for essays or athletic sports, as well as gifts to institutions like the Royal Society, Royal Geographical Society, or Literary Society are charitable (p). A gift for educational purpose is none the less charitable, because it contemplates a particular type of education or the education of a particular class of persons or the promotion of a particular branch of study (q).

Gifts for religion.

As a general rule gifts for "religious purposes" are *prima facie* charitable (r). As regards advancement of religion the court has not confined itself to the advancement of the tenets of the church established by law. There was at one time in England the

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(k) Tudor on Charities p. 14 (5th Edn.).
(l) Ibid pp. 24-25. (m) Carr V. Bedford 2 Rep. Ch. 77.
(n) (1842) 5 Beav. 289.
(o) Whicker V. Hume (1858) 7 H. L. C. 124.
(p) Tudor on Charities pp. 30-31. (q) Vide Keeton on Trust p. 140 and the cases referred thereto.
(r) In re. White (1893) 2 Ch. p. 41.

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law of Superstitious uses which rendered invalid "any trust which had for its object the propagation of the rites of a religion not tolerated by law" (s). The law was supposed to be founded on two statutes, one passed during the reign of King Henry VIII and the other in the time of King Edward VI. The first one which is statute 23 Henry VIII Chapter 10, invalidated all assurances and trusts of land to the use of parish churches, chapels etc. or to uses to have obits perpetual or a continual service of a priest after 1st March 1531-32, with a proviso that such uses for terms not exceeding 20 years shall be valid. The Act was general in its terms and the object obviously was to extend the Law of Mortmain. The other Statute which was I Edward VI Chap. 14, vested in the Crown certain chapels, chantries and lands which were dedicated to superstitious uses. Although both these Statutes were limited in their scope and were confined to the specific cases mentioned in them, they were considered to have established that all gifts for superstitious uses were contrary to the policy of law (t). Thus bequests for masses for souls, or for the maintenance of Roman Catholic Priests, monasteries or convents or for the propagation of Jewish religion were held to be void. The Roman Catholic Relief Act of 1829 gave freedom of worship to the Roman Catholics and Statute 9 and 10 Victoria Ch. 29 extended these privileges to the Jews. Under the Roman Catholic Charities Act of 1832 Roman Catholics were allowed to acquire and hold property for religious purposes. The celebration of masses was however still considered illegal and superstitious, and the leading pronouncement on this point is to be found in the case of West V. Shuttleworth (u) which was decided by Sir Charles Pepys, who afterwards became Lord Chancellor Cottenham. In this case there was a bequest to certain named Roman Catholic Chapels for prayers for the soul of the testatrix and her deceased husband. The bequest was held to be illegal under the Chantries Act of Edward VI. This decision was followed in several later cases (v) but was

Law of Superstitious uses as it existed in England.

Gift for celebration of masses not void as gift to superstitious uses.

(s) Boyle on Charities p. 242.
(t) Tudor on Charities p. 20. (u) 2 MY. & K. 684.
(v) Vide Heath V. Chapman (1854) 2 Drew. 417; In re. Blundell's Trust (1861) 30 Beav. 360; re. Fleetwood (1880) 15 Ch. D. 594.

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ultimately overruled by the House of Lords in Bourne V. Keane (w), which finally established that a bequest of personal estate for masses for the dead was not void as a gift to superstitious uses. This case however, although it held that gifts for saying prayers for repose of the souls of the deceased were not illegal on the ground of the uses being superstitious, did not decide that such gifts were necessarily charitable, and they might not be valid charitable gifts, if they were in the nature of private charities and led to no public benefit. Even when no question of superstitious use is involved, a trust to provide a private chaplain or for performing religious ceremonies in honour of particular deceased persons and similarly bequests for building or maintaining the vaults or tombs of the testator or his family, not within a church, are not charitable purposes (x). It is when the religious purposes tend directly or indirectly to the instruction or edification of the public that they are considered valid charitable purposes in law. In the recent case of In re Caus Lindeboom V. Camille (y), Luxmoore, J. held that a gift for saying of masses is charitable, as being for the advancement of religion, because it enables a ritual act to be performed which is the central act of the religion of a large proportion of Christian people and because it assists in the endowment of priests whose duty it is to perform the act.

Celebration of masses now held to be charitable purpose.

Gift for religion when public benefit is lacking.

It would be seen that the test for deciding whether a religious object is charitable or not in the legal sense varies from generation to generation and generally speaking the law has successively grown more tolerant. But even when the object is religious in the proper sense, if the element of public benefit is totally lacking, the trust will not be enforced as a charitable trust. In the very recent case of Gilmour V. Coats (z), the question arose whether the dedication of property for the purposes of a Carmelite convent was charitable in the legal sense. The convent comprised an association of strictly cloistered and purely contemplative nuns who devoted themselves

(w) (1919) A. C. 815
(x) Tudor on Charities pp. 15-16.
(y) (1934) 1 Ch. 162.
(z) (1949) A. E. R. p. 848 H. L., (1949) A. C. 426.

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entirely to worship, prayer and meditation and engaged in no activities for the benefit of anyone outside their own association. They were regarded however in the Roman Catholic Church as causing, by means of their private worship, prayers and meditations, the intervention of God to bring about the spiritual improvement of members of the public outside the convent and also provide an example for self-denial and concentration on religious matters which was of spiritual value to the public. It was held by the House of Lords that the gift was not charitable. It was said that the court could act only on proof and no temporal court of law could determine the truth of any religious belief, and therefore since the purpose of a trust must be one which the court itself could determine, the court was not entitled to accept and act on the belief of the Roman Catholic Church that the spiritual benefit to mankind flowing from intercessory prayer was sufficient to establish the necessary element of public benefit. It was held further that the benefit to be derived by others from the example of pious lives was something too vague and intangible to satisfy the test of public benefit. Their Lordships followed an earlier decision of V.C. Wickens in Cocks V. Manners (a), where a gift to a Dominican convent which consisted of Roman Catholic females living together by mutual agreement in a state of celibacy for the purpose of sanctifying their own lives by prayers and contemplation was held not to be a charitable trust and hence void on the ground of perpetuity.

Gifts for the advancement of religion in general terms are valid. Thus trust could be created for 'promoting religion', for 'the worship of God', for 'the spread of gospel' or for 'Christian amity' or 'to be used in the service of my Lord and the master' (b). Gifts for propagation of religious doctrines differing from those of the established church are not void unless they inculcate doctrines adverse to the foundation of all religion and are subversive of all morality (c). In Bowman V. Secular Society Ltd. (d) Lord

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(a) 12 Eq. p. 574.
(b) Halsbury Vol. 4—Charities p. 112.
(c) Thornton V. Howe—31 Beav. p. 14. (d) (1917) A. C. 406.

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Parker observed that "a trust for the purpose of any kind of monotheistic theism would be a good charitable trust, and that it is not illegal or contrary to public policy to deny the authority of the Old or the New testament."

Other Charitable purposes.

The fourth division of charitable trusts, as classified by Lord Macnaghten, comprises a variety of purposes beneficial to the community which do not fall under any of the previous heads. They must be public in character but save and except this, it is difficult to say what other precise elements are necessary in order to entitle them to be regarded as valid charitable trusts in law. As was said by Chitty, J. in Re Foveaux (e) "the best that can be done is to consider each case as it arises upon its own special circumstances." Gifts for saving life, e.g. by providing life boat, or in favour of institutions like the Royal National Life Boat Association, or the Royal Humane Society are charitable. Gifts to promote happiness of mankind by encouragement of useful arts or for improvement of agriculture or for preservation of vegetables and animals useful to men come under this category (f). Prevention of cruelty to animals, if the animals are useful to man, would be regarded as charitable purpose. In the case of University of London V. Yarrow (g) there was a bequest for establishing an institution for investigating, studying and curing maladies, distempers and injuries to which quadrupeds and birds useful to man might be found subject, and the bequest was held to create a valid charitable trust. Prevention of cruelty to animals whether domestic or not has itself been regarded as a charitable object. Thus gifts to a Society for promoting prosecution for cruelty to animals or for founding antivivisection society have been held to be charitable (h). In Re Foveaux (i) Chitty. J. observed as follows :—

Gifts to life saving societies are charitable.

Prevention of cruelty is a charitable purpose.

"Cruelty is degrading to man, and a society for the suppression of cruelty to the lower animals whether domestic or not has for its object not only the protection of the animals themselves, but the ad-

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(e) (1895) 2 Ch. 501. (f) Tudor on Charities p. 38.
(g) 1 De G. & J. 72.
(h) Vide Re Douglas—35 Ch. D. 472 ; Re Foveaux (1895) 2 Ch. 501.
(i) (1895) 2 Ch. 501.

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vancement of morals and education among men. The purpose of these societies, whether they are right or wrong in the opinions they hold, is charitable in the legal sense of the term."

Suppression of vivisection held not to be charitable.

The decision in Re Foveaux is, however, no longer good law and it has been expressly overruled by the House of Lords in National Anti-vivisection Society V. Inland Revenue Commissioners (j) ; where it has been held that a society which has as its object total suppression of vivisection is not a body of persons established for charitable purposes only within the meaning of the Income-Tax Act. In the opinion of the majority of the Law Lords (Lord Porter dissenting) any assumed public benefit in the direction of the advancement of morals and education of public is far out-weighed in such cases by the detriment to medical science and research and consequently to public health which would result if the society succeeded in achieving its object. It was further held that the main object of the society was political inasmuch as it aimed at a revision of the existing law relating to vivisection.

Trusts for benefit of animals.

In all the "animal cases" that have been decided by the Courts of England the cardinal principle seems to be that a trust in favour of animals depends for its validity on the question whether such a gift produces benefit to mankind. "So far as I know", thus observed Russel L. J. in Re Grove-Grady (k), "there is no decision which upholds a trust in perpetuity in favour of animals upon any other ground than this that the execution of the trust in the manner defined by the creator of the trust must produce some benefit to mankind.....In my opinion the court must determine in each case whether the trusts are such that benefit to the community must necessarily result from their execution." This enunciation of the law was in a way accepted by the House of Lords in the National Anti-vivisection Society V. Inland Revenue Commissioners referred to above. Prevention of cruelty to animals might have the result of developing the finer side of man and in that sense might lead to advancement of public morals. In the

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(j) (1948) A. C. 31.
(k) (1929) 1 Ch. 557.

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House of Lords' case cited above such benefit was held to be far out-weighed by suppression of vivisection which was beneficial to human beings. When, however, no such question is involved, any trust for relieving the sufferings of old or maimed animals would be a good charitable trust. In Re Moss, Hobrough V. Harvey (1) the question arose as to the validity of a disposition for the welfare of cats. A testatrix directed by her will that her leasehold house should be sold and one-half of the proceeds of sale be given to a certain person "for her to use at her discretion for her work for the welfare of cats and kittens needing care and attention." It was held that the gifts were valid inasmuch as they were calculated to develop the finer side of human nature of which care for old and sick animals was a manifestation and therefore were for the benefit of mankind.

Propagation of controversial doctrines may be charitable.

The propagation of particular doctrines, even if they are controversial, may be charitable. But if the doctrines are contrary to public policy and subversive of all religion and morality, the gift in support of them fails (m). In Bowman V. Secular Society Ltd. (n) Lord Parker said : "A trust for the attainment of political objects has always been held invalid, not because it is illegal, for everyone is at liberty to advocate or promote by lawful means a change in the law, but the court has no means of judging whether a proposed change in the law will or will not be for public benefit and therefore can not say that a gift to secure the change is a charitable gift." In Re Scowcroft (o) the vicar of a parish by his will devised to the vicar for the time-being a building to be used as a village club and reading room, to be maintained for the furtherance of conservative principles, and religious and mental improvement, and to be kept free from intoxicants and dancing. Sterling, J. held that it was a good charity. "It is either a gift", thus observed the learned Judge, "for the furtherance of conservative principles in such a way as to advance religion, and mental improvement at the same time, or a gift for the furtherance of religion and mental improvement

(l) (1949) A. E. R. p. 495.
(m) Russel V. Jackson—10 Ha. 204. (n) (1917) A. C. 406 at p. 442.
(o) (1898) 2 Ch. 638.

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in accordance with conservative principles and in either case the furtherance of religious and mental improvement is in my judgment an essential part of the gift." The point whether the propagation of conservative principles alone would be charitable was left undecided. In Re Titley (p) a testator by his will directed his trustees to apply one-fifth of the residuary estate "for such patriotic purposes or objects and such charitable institution or institutions or charitable object or objects in the British Empire as they in their absolute discretion should select." The court of appeal held that the words of the gift must be read disjunctively and that since the trustees could apply the trust property for non-charitable purposes under it, the trust was void. This decision was upheld by the House of Lords. Lord Haldane in the House of Lords pointed out that a distinction exists between a patriotic intention and a charitable intention and this distinction is not only in language but in substance. "In the case of a gift for charitable purposes", thus observed his Lordship, "there is a desire to profit people who would not be profited without a gift—that is the dominant motive. In the case of patriotism there is a desire to fulfil one dominant purpose, that is to benefit the cause of the country to which you belong. Those are two different heads of intentions, different perhaps not in such a way that they never overlap but in such a fashion as to distinguish the one class from the other."

In Bonar Law Memorial Trust V. Commissioners of Inland Revenue (q) the objects of the trust were specified as follows :—(a) To honour the memory of a great statesman (Mr. Bonar Law) ; (b) to preserve a great and beautiful historical building from destruction ; (c) to cause the said mansion, house and gardens and park to be used for the purposes of an educational centre or college for educating persons in economics, in political and social science, in political history with special reference to the development of the British constitution and the growth and expansion of the British Empire and in such other subjects as the governing

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(p) (1923) 1 Ch. 258 ; (1924) A. C. 262.
(q) (1933) 49 T. L. R. 220.

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body may, from time to time, deem desirable. It was held by Finlay, J. that inasmuch as the last clause gave the governing body authority to promote lectures which might be made propaganda for a political party, the purpose could not strictly be termed charitable. In Russel V. Jackson (r) the propagation of socialistic doctrines was held to be charitable, provided on enquiry they were not found illegal. If seems that when the object is charitable, the fact that the object is to be attained by political means does not affect its character. Thus a gift to a fund for financing a bill before Parliament to establish a See at Birmingham was declared charitable (s). But on the other hand Rowlatt, J. held that the promotion of temperance by purely political means was not charitable (t). A trust for the benefit of the inhabitants of a particular place or a particular county or borough is always charitable. Thus gifts for supplying a town with water or to a Municipality for relief of poor rates are good charitable gifts. Sports or recreation are not ordinarily considered charitable (u). In the recent case of Re Hadden, Public Trustee V. More (v), a testator gave the residue of his estate *inter alia*, for establishing at Nottingham or other place of the working people, playing fields, parks or gymnasiums which will give recreation to as many people as possible. It was held that the object was charitable as the dominant object of the testator was the health and welfare of the working classes. In Re Dupree's Trust (w), a trust for encouragement of chess playing among boys and youths in Portsmouth was held to be charitable.

Sports and recreation may be charitable purposes.

In Re Hummeltenberg (x) the establishment of a college for the training of spiritualists' mediums was held not to be charitable. This case is the leading authority for the proposition that where the question arises as to whether a particular purpose is charitable or not, the decision rests entirely with the court. The fact that the donor's own opinion was that the object was charitable is not enough (y).

(r) 10 Ha. 204 (1852).
(s) Re Villiers V. Wilkes—72 L. T. 323.
(t) Inland Revenue Commissioner V. Temperance Council on Christian Churches—42 T. L. R. 618 (1926).
(u) Tudor on Charities p. 46. (v) (1932) 1 Ch. 133.
(w) (1945) L. J. Ch. p. 1. (x) (1923) 1 Ch. 237.
(y) Vide Re Hummeltenberg (1923) 1 Ch. p. 237.

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Religious & charitable purposes in Hindu law.

Religious and charitable purposes have nowhere been defined by Hindu lawyers. It was said by Sir Subramanya Ayer, J. in Partha Sarathi Pillai V. Thiruvengada (z) that the expression "dharma" when applied to gifts means and includes, according to Hindu text writers, what are known as *Istha* and *Purtta* works. As I have said already in the first lecture, no exhaustive list of such works has been drawn up by the Hindu lawgivers, and they include all acts of piety and benevolence whether sanctioned by Vedas or by the popular religion, the nature of the acts differing at different periods of Hindu religious history.

In the early Regulations both of the Bengal and Madras Presidency the expression used was "for pious and other beneficial purposes." These purposes were not defined but it was clear from the language and object of these regulations that the word 'pious' was not confined to objects of religious character, but included charitable objects in the secular sense as well. Act XXI of 1860 provided for registration of societies established for the preservation of literature, science or the fine arts, or the diffusion of knowledge or for charitable purposes (a). It was held by the Allahabad High Court in Anjuman Islamia of Muttra V. Nasiruddin (b) that "though the section did not provide for registration of a religious society, yet a religious society would come within the purview of the Act, as it would be deemed to be a society for charitable purposes".

Charitable trust excluded from operation of the rule against perpetuity and exempted from payment of Income Tax.

In the Charitable Endowments Act (Act VI of 1890), the expression 'charitable purpose' has been defined to include relief of the poor, education, medical relief, and the advancement of any other object of general utility, but does not include a purpose which relates exclusively to religious teachings and worship. Thus it seems, that this Act is confined to charitable trusts of a purely non religious character. The Religious and Charitable Trust Act of 1920 does not give any definition of either of these expressions. Properties dedicated for religious and charitable purposes are, under almost all systems of law, excluded from operation of the rule against perpetuity, and

(z) 30 Mad. 340. (a) Vide Sec. 1. (b) 28 All. 384.

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they are generally exempted from liability to pay income tax.

Section 19 of the Transfer of Property Act provides that the rule against perpetuity, as well as the other limitations laid down in sections 16 and 17 of the Act, shall not apply in the case of a transfer of property for the benefit of the public, in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind. By a long course of judicial decisions, similar exceptions have been read into section 114 of the Indian Succession Act, which embodies the rule against perpetuity.

Section 4 (3) of the Indian Income Tax Act of 1922 makes the provision of the Act inapplicable to

(i) Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes and in the case of property so held in part only for such purposes, the income applied, or finally set apart for application thereto ;

(ii) Any income derived from business carried on on behalf of a religious or charitable institution when the income is applied solely for purposes of the institution ;

(iii) Any income of a religious or charitable institution derived from voluntary contributions and applicable solely to religious or charitable purposes.

Religious purpose is not defined in the section but charitable purpose is described as including relief of the poor, education, medical relief and the advancement of any other object of public utility (c).

Section 18 of the Transfer of Property Act has been made applicable to the Hindus by the amending Act of 1929. Thus in order that a Hindu Religious or charitable trust may avoid the law against perpetuity or claim exemption from payment of income-tax in respect of the income derived from trust property, it is necessary that it should come within the purview of section 18 of the T. P. Act or section 4(3) of the Income Tax Act respectively.

(c) Act XI of 1922 (amended by Act VII of 1939).

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These sections, as you have seen, mention only the principal heads of charity as are known to English lawyers, and in interpreting these sections our courts of law have had to place reliance upon decisions of English Courts to a large extent. It cannot be denied that the pronouncements of English Judges have been, in many cases, of considerable assistance to our courts of law ; but I must say that a too rigid adherence to them is neither commendable nor just. You have already seen that the English law on the subject developed on the lines of the Statute of Elizabeth which has no application in India. Whether a particular object of trust can legitimately be described as charitable must depend on the customs and usages of the people, and the common opinion amongst the community to which the parties interested belong. This is particularly true in matters of religion. As was observed by West, J. in Fatima Bibi V. The Advocate General of Bombay (d) "objects which the English law would probably regard as superstitious are allowable, and even commendable in Hindu law." You should bear in mind in this connection that the Statutes against Superstitious uses which at one time were very much prominent in England were never extended to India, and were held not to apply even to non-Hindus. Das Merces V. Cones (e) is one of the earliest pronouncements on this point which held that there was no law against superstitious uses operating in the case of a testator who was born and died in Calcutta. This was followed by Phear, J. in Andrews V. Joakim (f). In this case the interest on certain G. P. notes was directed by the testator to be applied for performing of masses. It was held that the bequest was not void. In a still later Calcutta case a Hebrew merchant domiciled in Calcutta made a will by which certain bequests were made, *inter alia*, for giving alms for the spiritual benefit of the testator. Markby, J. held that the English rule of law which prohibited bequest of money to superstitious uses had no application in this country, but the gift was void for uncertainty, as it would be impossible for the court in performing its duty of superintending the

Law of Superstitious uses not applicable to India.

(d) 6 Bom. 42. (e) (1864) 2 Hyde 65.
(f) 2 B. L. R. O. C. 148.

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administration of the trust to determine as to which kind of alms would be for the testator's benefit according to the tenets of Jewish religion (g).

Although the law of superstitious uses has no application in India, and a trust created for such purpose cannot be said to be invalid in law, the question still arises as to whether such trust could rank as charitable trust proper and can claim exemption from the rule against perpetuity. The point was discussed in the case of The Most Reverend Joseph Colgan V. Administrator General of Madras (h). There an Armanian lady died leaving a will whereby she bequeathed a certain sum of money to the executors with direction that the income thereof should be given for perpetual masses for "the benefit of her soul, and other souls in purgatory". The validity of the gift was questioned and it was held that although the law of superstitious uses had no application in India, yet the bequest was void as offending the rule against perpetuity. It was said, that in order to constitute charitable gift, it must be for the benefit of the public or a section of the public, but the saying of masses as directed by the testatrix could not be regarded as charitable, as they could at best confer solace on her or her family. This case was decided in 1892 and the learned Judges relied on the principle enunciated by the English courts in West V. Shuttleworth (i) and other cases that followed it. As I have said already not only the decision in West V. Shuttleworth has now been overruled by the House of Lords in Bourne V. Keane (j), but the saying of masses is itself held to be a charitable object, as it afiords solace to a large number of Christian people and assists in the endowment of priests (k). The view taken in this case therefore cannot be said to be good law even on the authorities of English Courts as they stand at present.

The same restricted view, it seems, was taken by the Bombay High Court in Limji Nowroji Banaji V. Bapuji (1). There a Parsi testator by his will direc-

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(g) Joseph Ezekiel Judah V. Aaron Hye 5 B. L. R. O. C. J. 433.
(h) 15 Mad. 424.
(i) 2 My & K. 684. (j) (1919) A. C. 815.
(k) Vide in Re Caus (1934) 1 Ch. 162. (l) 11 Bom. 441.

CENTRAL LIBRARY

ted that the income arising from an one-third share of a bungalow in Bombay, to which he was entitled, should be devoted in perpetuity to "the performance of the *Baj Rozgar* ceremonies and the consecration of the *Nirangdin* and the recitation of the *Yezashni* and the annual *Ghambar* and *Dosla ceremonies*." From the evidence adduced it was found that except *muktad* which was celebrated for the benefit of the deceased, all the other ceremonies were performed for the benefit of both the living and the dead. They were for consolation of the deceased and for propitiation of the *frohars* or guardian spirits, who correspond to the *Pitris* of the Brahmans and the *Manes* of the Romans. In the *gumbhar* ceremony, the entire Parsi community had a share, though not always. In these circumstances it was held that as the ceremonies were to be performed for the benefit of individuals and not of the public, they were void as offending the rule against perpetuities.

This decision cannot be said to be correct, and the right view was taken by Davar, J. in the subsequent case of Jamshedji Cursetji V. Soonabai (m) where the identical point came up for consideration. Here also there were properties bequeathed by a Parsi testator for the purpose of devoting the income thereof in perpetuity for the purpose of performing *muktad baj*, *vyezashni*, and other ceremonies, and they were held to be valid charitable trusts and as such exempt from the rule against perpetuity. The learned Judge held that in the earlier case proper materials were not placed before the court and that the performance of the *muktad* ceremonies was a religious duty imposed on the Zorastrians by the proved tenets of the religion they profess. The ceremonies themselves are acts of religious worship. They include worship, praise and adoration of the Supreme Deity and thanksgiving for all his mercies and they are believed by the Zorastrian community to bring down both temporal and spiritual benefits, not only on those who perform the ceremony, but on the whole community, on their country and its sovereign—on all mankind and the universe. "If this is the belief of the community", thus observed the

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(m) 33 Bom. 122.

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learned Judge in his judgment, "and it is proved undoubtedly to be the belief of Zorastrian community, —a secular Judge is bound to accept that belief—it is not for him to sit in judgment on that belief, he has no right to interfere with the conscience of a donor who makes a gift in favour of what he believes to be in advancement of his religion and for the welfare of his community or of mankind."

These observations, if I may say so, apply with full force to trusts created by Hindus for religious purposes. Undoubtedly the court and not the donor is the judge, of whether an object is charitable or not, but the court cannot enter into the merits of particular religious doctrine, and therefore must remain neutral. The divine service of a particular religion is defined by the doctrines of the religion itself and no court can appreciate their spiritual efficacy, unless it knows these doctrines and hypothetically admits them to be true. In controversial matters the court cannot possibly decide whether the doctrines are beneficial to the community or not. It has got to act upon the belief of the members of the community concerned, and unless these beliefs are *per se* immoral or opposed to public policy, it cannot exclude those who profess any lawful creed from the benefit of charitable gifts. On this point the view expressed by Sir John Romilly in Thornton V. Howe (n) to which I have already referred is instructive. In that case a testatrix bequeathed the residue of her estate both real and personal in trust for printing, publishing and propagating the sacred writings of Joana South Cote. The heirs at law filed a bill for a declaration that the trust was void in law. He charged that the writings of Joana South Cote purported to declare, maintain or reveal that she was with child by the Holy Ghost, and that a second *messiah* was about to be born of her body, and that her writings were of a blasphemous and profane character. Sir John Romilly himself went through the writings of Joana South Cote, and found that there were much in her writings which were foolish, but there was nothing that was *per se* immoral or irreligious and he declined to declare the trust invalid.

(n) (1862) 31 Beav. 14

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The Hindu religious system is encyclopædic in its character ; it is not one particular form of faith but a commonwealth of faiths, and in it are found the different grades or strata of religious thought and culture beginning from idolatry and ending with the highest form of philosophical monism. In the case of Ranchoddas V. Parbati Bai (o), the counsel for the respondent, while arguing his case before the Judicial Committee, hinted at the fact that even providing milk for cobras in a temple was regarded as a religious act by the Hindus. I do not think that any court in India will uphold a religious trust the object and purpose of which is to provide milk for reptiles. These practices do not form part of the Hindu religion which is founded on the Vedas, and are mostly in the nature of an excrecence due to the contact of the Aryans with the aboriginal races of India. What is on the face of it sinful or immoral cannot certainly be countenanced by any court of law, but save and except practices like those referred to above, the efficacy of religious rites and ceremonies must have to be determined in accordance with the ideas and beliefs that are entertained by orthodox Hindus on the subject. Thus a Hindu can make a valid gift of property for the worship of an idol. Under the Hindu law, an idol as a symbol of certain religious purposes, is capable of being endowed with property, and it is a valid religious trust to dedicate property for perpetuating the worship of an idol (p). That the idol is a household or family idol and is not meant for worship by the public does not make it none the less a valid object of charitable trust. It was held by Sargent, C. J. in Rupa Jagashet V. Krishnaji (q) that the distinction which obtains in English law with respect to public and private charities is not to be found in the Hindu text writers. "The idol is itself, thus observed the learned Chief Justice, "as is explained in West & Buhler's Hindu law, is looked upon as a kind of human entity the

Gifts to idols in Hindu law either public or private perfectly valid.

(o) 26 I. A. 71.
(p) Vide Mullick V. Mullick—1 Knapp 215 ; Juggut Mohiny V. Sokhimany—14 M. I. A. 289 ; Bhagabutty V. Guruprosanna 25 Cal. 112.
(q) 9 Bom. 169.

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religious services of which are allowed by the Hindu law to be provided for in perpetuity".

Various kinds of endowment connected with worship of idols are recognised in Hindu law. There can be a gift in perpetuity for maintenance of an idol already consecrated (r) or which is to be established and consecrated in future (s) or even for celebration of certain specific rites of an idol (t). Trusts are generally created by Hindus for establishment of a Temple and setting up a particular deity therein (u), and it is quite proper to make provisions for celebration of pujas of such deities like Durga and Lakshmi who are worshlpped periodicaly and of which no permanent images are kept (v). Building of a Temple is itself a religious purpose and so is completion of a building left unfinished by the testator or founder (w). It has been held and quite rightly by the Madras High Court that the building of a Samadhi or tomb over the mortal remains of a saintly person is not a charitable purpose according to Hindu law. Where, therefore, a founder directed a temple to be erected only as an adjunct to a tomb or Samadhi of a holy person and provided for the performance of Guru Puja at the Samadhi, it was held that it did not constitute a valid charitable gift (x).

Mutts or monasteries are recognised pious institutions among the Hindus.

I have already told you something about the religious institution known as Mutt. The Mutts are generally centres of theological learning, the object of which is to provide a line of competent teachers for the propagation of particular tenets of the Hindu religion. In addition to religious instructions certain other charitable purposes are also served by these Mutts. It is a recognised form of piety under the Hindu law to dedicate property for establishment or maintenance of a Mutt. I will have occasion to say

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(r) Rajeswaree Debia V. Jogendra—23 W. R. 278.
(s) Bhupati Nath V. Ram Lall—37 Cal. 128 (F. B.) ; Sarab Sahh V. Ram Prasad—46 All. 130. (t) Vythilinga V. Soma Sundaram—17 Mad. 199.
(u) Gokool Nath V. Iswarlochan—14 Cal. 222 ; Lakhinarain V. Gosta 41 C. W. N. 759.
(v) Prafulla Chandra V. Jogendra Nath—9 C. W. N. 528.
(w) Mohar Singh V. Het Singh—32 All. 337 ; Khub Lal V. Ajodhya Misir—43 Cal. 574.
(x) Draivasundaram V. Subrahmania—ILR 1945 Mad. 854 ; Veluswami V. Dandapani—AIR 1946 Mad. 485.

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more about this form of religious trust in subsequent lectures.

"Sradh" a valid charitable object in Hindu law.

The Hindus perform certain religious rites known as "Sradh" which consist in periodical offering of oblations to their deceased ancestors or relations for the propitiation of their souls. Hindu testators are not unoften found to make provisions in their wills for celebration of *Sradh* of themselves, or their ancestors. Like the Catholic masses or prayers for souls of the deceased, they may be said in one sense to aim at comforting particular individuals, and not the public generally, but as I have said already, even Catholic masses are now regarded as valid objects of charity in English law. The Indian courts have unhesitatingly upheld trusts for performance of 'Sradhs' of the donor or of other members of his family and have never troubled themselves with the question as to whether they could come within the definition of charity in English law. The decision in Dwarka Nath Bysack V. Burroda Persad Bysack (y) is an illustrative case on the point, which not only holds the performance of Sradh to be a valid object of trust according to Hindu law, but indicates the various religious and charitable purposes, for which a pious Hindu ordinarily dedicates his property. In this case the directions given by the testator in his will were *inter alia* as follows :—"I do direct my trustee to spend suitable sums for the annual Sradhs or anniversaries of my father, mother and grandfather as well as of myself after my demise, for the performance of the ceremonies and the feeding of the Brahmins and the poor ; to spend suitable sums for the annual contributions and gifts to the Brahmins, Pandits holding tols for learning in the country, at the time of Durga Puja ; to spend suitable sums for the perusal of Mahabharat and Puran and for the prayer of God during the month of Kartick. Should there be any surplus after the above expenditure then I do hereby direct my trustee to spend the said surplus in the contribution towards the marriage of the daughters of the poor in my class and of the poor Brahmins and towards the education of the sons of the poor amongst my class, and of the poor Brahmins

Usual religious and and charitable gifts among the Hindus.

(y) 4 Cal. 443.

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ADVANCEMENT OF LEARNING
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and other respectable castes as my trustee will think fit to comply." No question was raised that any of the purposes specified by the testator was not a proper object of religious and charitable trust. The contention put forward on behalf of the plaintiff was that the directions as regards spending of money for Sradhs, feeding of the Brahmins and the poor and for making gifts to Pundits etc., were so vague and indefinite that the amount given for those purposes could not be ascertained and consequently the subsequent directions regarding the disposal of the surplus would also fail. This contention was negatived by Pontifix, J. who held that the gifts were all valid testamentary bequests, and that the words "should there be any surplus etc." created a general residuary bequest. The decision was affirmed in appeal and though the appellate court expressed doubts as to whether the bequests for Pandits holding tols as also for the reading of Mahabharat and Puran, and for offering prayers to God were not void for uncertainty, it upheld the decision of the original court that the gift of the surplus was perfectly valid. The Bombay High Court has followed this decision in Lakshmi Sankar V. Baijnath (z) where a testator devised all his property to the plaintiffs as trustees directing them to reduce to money and spend the same, in the performance of his funeral ceremonies and in feeding Brahmins according to the custom of his caste. The learned Judge upheld the bequest as valid, and the case was sent back for an enquiry as to whether the testator had powers of disposition over the property bequeathed.

Reading of sacred books and gifts to Brahmins & Pandits valid forms of charity.

It will be clear from the decision in Dwarka Nath V. Burroda (a) that reading of sacred books of the Hindus like Mahabharat and Puran, or giving presents to Brahmins and Pandits on sacred occasions are proper objects of charity ; so are trusts for *Kirtan* or chanting the names of God in His various forms. It will be seen that in the Hindu system there is a tendency to introduce a religious element in what appears to be a purely secular gift. Thus the feeding of the poor or the Brahmins is regarded as meritori-

(z) 6 Bom. 24.
(a) 4 Cal. 443.

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ous act, even from the religious point of view, and it is an invariable appurtenance to certain religious ceremonies like *Sradh* or celebration of periodical pujas. In Kedar Nath Dutt V. Atul Kristo Ghosh (b) the testator directed *inter alia* that the surplus of a certain reserve fund should be spent for the worship of the *God Siva* on the night called *Sivaratri* and for feeding Brahmins, and making presents to them on the day following. It was contended that the bequest for feeding of Brahmins was bad in law as it did not come within charitable purposes. Fletcher, J. overruled this contention. "The testator was a Hindu," thus observed the learned Judge in his judgment, "and his will must be construed with reference to Hindu law. There can be no doubt that the feeding and paying of the Brahmins would be in accordance with Hindu ideas, a meritorious Act." A direction in the will to spend income 'in feeding poor indigent Hindus' (c) is a valid charity, so is a bequest 'to give food and raiment perpetually to 50 persons who are lame, diseased or otherwise deserving of charity' (d) "or a trust to feed fakirs and mendicants" (e). The fact that the recipients of the benefit are persons belonging to particular communities or sects do not make any difference.

Dharamsalas.

A popular form of Hindu charitable trust is the institution known as Dharamsala. The expression *Dharamsala* primarily signifies a rest house, and it corresponds to what is known as choultry in Southern India, the object of which is to provide rest and sometimes food to travellers and itinerant ascetics. It is the same thing as *Propatha* of the Vedas and *Pratisrayagriha* of the later Brahminical writers. A *Sadabrat* on the other hand is an institution the object of which is to distribute food to mendicants and needy people. What is known as *Annasatra* is a mere species of Sadabrat. There are a large number of cases, where trusts relating to Dharamsala or Sadabrat have come up for consideration before our courts of law, and their validity has never been

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(b) 12 C.W.N. 1083.
(c) Rajendra Lall V. Raj Coomari—34 Cal. 5.
(d) Rajeswari V. Jogendra—23 W.R. C.R. 278.
(e) Sheosankar V. Ram Shewak—24 Cal. 77.

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Sadabrats & Anna-satras.

questioned (f). In Jamnabai V. Khimji (g) the testator himself had been carrying on a Sadabrat during his life time ; he directed another to be set up after his death. The court held the trust to be valid, although the expenses for maintaining the new Sadabrat were not specified. It was held that they would be on the same scale as the existing one. In Advocate General V. Strangman (h) a question arose as to the validity of a gift for *annachatra*. The court upheld the validity of the gift and Sir Lawrence Jenkins in course of his judgment observed as follows :—"An annachatra is an institution for distribution of food to Brahmins and mendicants, and varies from *Sadabrat* in a particular which is immaterial. A gift to Sadabrat has been held good, and for similar reasons we should, I think, uphold the present legacy". The benefit of Sadabarts and Dharamsalas, might be restricted to members of a particular caste or community or to the followers of a particular religion, but nevertheless the purpose would be charitable according to the accepted sense of the word, as the object is not to benefit specfific individuals.

Excavation of tanks and wells.

Excavation of tanks and wells is another form of charity, which is most popular among the Hindus and has been in existence from very early time. All the Smriti writers place it at the forefront of Purtta works. "As there is no sustaining of life in both worlds without water", so runs a passage in Vishnu Dharmottora "the wise man should always construct reservoirs of water. A well is equal to the *Agnistoma* sacrifice, in a desert it equals the *Aswamedha*. The well flowing with drinking water destroys all sins. The well maker, attaining heaven, enjoys all pleasures" (i).

Mahabharat also says : "The Gods, men, deceased ancestors, gandharvas, serpents, rakshasas, and plants take shelter of a reservoir of water. All the progenitors of a man obtain salvation who excavated a reservoir in which cow and good men always drink water.

(f) See in this connection Purmanundass V. Venayekrao-9 I.A. 86 ; Tricumdas Mulji V. Khimji—16 Bom. 626 : Morarji V. Nenbai-17 Bom. 351 ; Jugalkishore V. Lakshmandass—23 Bom. 659.
(g) 14 Bom. 1.
(h) 6 Bom. L.R. 56.
(i) Quoted in Hemadri's Danakhanda Adhya 13. See Saraswati T. L. L. 192.

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ADVANCEMENT OF LEARNING
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The man in whose tank cows, other quadrupeds, birds and human beings are relieved of thirst by drinking obtains the reward of Aswamedha" (j).

Various ritualistic formalities are prescribed by Brahminical writers, which have got to be performed by the donor who wants to dedicate a tank, well or other reservoir of water. You will find them discussed with elaborate fullness by late Pandit Pran Nath Sastri, in his erudite lectures on the Hindu law of Endowments (k). The indispensable ceremony is the sacrifice in honour of Varuna the God water. In *Aswalayan's Grihya Parisista* as well as *Matsya Puran* it is laid down that a Mandap has got to be erected, and that the priest should enter the Mandap along with the worshipper placing a milky tree in its front. There should be images of Brahma, Vishnu, Siva etc., and effigies of aquatic animals should be placed round them. These effigies are to be thrown into the water after the ceremonies of dedication are complete. In the case of a tank, the "Goruttarana" ceremony which consists in making a cow cross the water is absolutely necessary. The worshipper causes a cow to enter into the tank reciting certain texts which invoke her to purify the water. The animal is held at the tip of its tail, and in this way it is made to cross the water. After the ceremony is performed the cow is bestowed on a Brahmin. Another ceremony which is enjoined by later writers is the *Nagajasthi* ceremony. *Nagajasthi* literally means serpent rod and the ceremony consists in fixing a large upright rod in the middle of the water. By the formula of dedication the worshipper dedicates the water for the use of all beings and animals who may use the same for bathing, drinking, plunging, etc. Dedication of a tank or well for the use of the public, would certainly be a charitable object, but when a testator leaves directions in his will that a well or tank should be excavated after his death without saying whether it would be for the benefit of the public or not, a question may arise whether a valid charitable trust is created in such cases. The answer would be in the affirmative if there was nothing in

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(j) Ibid.
(k) T. L. L. on Hindu Law of Endowment—Lec. VIII.

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the wil to show that the use of the water was meant to be confined to specified persons. In Jamnabai V. Khimji (1) Sargeant C. J. observed as follows :—"Mr. Justice Jardine considered he could not presume a charitable object in a well and an *avada* (a cistern for animals to drink water from). Such an object is so frequently the result of charitable intention in oriental countries, and is so entirely in accordance with the notions of the people of this country, that we think that in the absence of anything to show that the testator intended the well and *avada* to be built for the benefit of his property they should be presumed to have been intended by the testator for the use of the public."

Quite apart from dedication of a tank for public use, even the grant of land for the construction of a water reservoir which would benefit others is a meritorious act according to Hindu ideas. In certain parts of India, particularly in Bengal, it is found that zemindars often make grants of land free of rent in order that the grantee might excavate a tank upon the same for the benefit of himself and other tenants of the grantor.

In Peezeeroddeen V. Modhoosoodan (m) the zemindar by a sanad made a grant of 22 bighas of land with a stipulation that the grantee would dig a tank on the land and distribute water to the people of the village where great inconvenience was felt for want of water. The grantee excavated a tank and continued to distribute water. In a suit to annul the grant on the ground that it was void under section 10 of Regulation XIX of 1793, it was held by the majority of the judges that though grants of land free of rent are void under the provision of that regulation, yet the grant in question was valid, the reservation of a right to the use of water by the tenants of the zemindar being a benefit or service in the nature of a rent. So long therefore as the tank remains in existence the zemindar cannot resume the grant or assess the land to rent (n).

(l) 14 Bom. 1.
(m) 2 W. R. (F. B.) 15.
(n) Birendra Kishore V. Akram Ali—39 Cal. 439.

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ADVANCEMENT OF LEARNING
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Consecration of trees and groves is another object of religious merit according to the Hindus. As Pandit Pran Nath says in his Tagore Law Lectures (o), in a tropical climate the relation between water reservoirs and trees is obvious. Trees are necessary in order to afford shade and shelter to the traveller who slakes his thirst at the pool of water and the vicinity of water is necessary to secure proper growth and nourishment to the trees. Apart from these secular benefits planting of trees is productive of great spiritual merit according to Hindu Smriti writers. "The trees" says the Mahabharat "honour the Gods with flowers, the manes with fruit, the guests by shade. The planter of trees procures the salvation of his deceased ancestors as well as those of the succeeding future generations" (p). Special religious efficacy is ascribed in the sacred books of the Hindus to the selected groupings of plants ; one of them is called *Panchamra* and the other *Panchavati.* Panchavati, consists of (1) Aswatha, (2) Vilwa, (3) Vata, (4) Dhatri and (5) Asoka. They have got to be planted on the East, North, South and South-East respectively of a Vedi or raised platform in the middle. The place is to be consecrated after the trees have grown for five years and it is said that religious austerities performed on such a spot are productive of endless rewards (q). In the case of Chandra Mohan Ganguly V. Jnanendra (r) a question arose whether a plot of land upon which a group of five trees known as *Panchabati* was planted and consecrated by the testator became a valid debuttar, or could still be regarded as his private property. Evidence was adduced to show that the land was consecrated, holy trees were planted and the vedi (raised platform) was erected. The founder used to go to this Panchabati every day, performed his puja and *anhic* there, seated on the vedi and engaged in pious and religious meditation. On these facts it was held by the trial judge that there was a valid dedication and this decision was affirmed by the High Court in appeal. Ashutosh Mookerjee, J. in delivering judgment referred to the original texts

Consecration of trees and groves.

(o) Lecture XI p. 230.
(p) Quoted in Hemadri's Danakhandas, Adhya 13.
(q) Vide Pandit's Tagore Law Lecture XI.
(r) 27 Cal. W. N. 1033.

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on the subject and gave a detailed description of the ceremony of *pratistha* for trees and groves as it occurs in *Matsyapuran* and other authorities. The same description has been given by Pandit Pran Nath in his Tagore Lectures and I will quote a few passages from this treatise for your information. The preliminary ceremonies for dedication of trees are the same as in the case of consecration of tank. The erection of the Mandapa, the appointment of priests and the collection of materials are the same. The trees which are the subject of the ceremony are to be irrigated, with holy water, beautified with rice-flour and alaktaka, adorned with garlands and covered with cloths. The earboring ceremony is then to be performed for each with a golden needle and collyrium applied (as if to their eyes) with a golden pencil ; and imitation fruits of silver placed upon the platform at the foot of each tree. A *kalasa* properly filled is to be installed for each, and homas offered for Indra and the other Lokapalas or guardians of the quarters of the globe and also in honour of 'Lord of the Forest' Vanaspati, of which mention has already been made, and which is specifically introduced because of the trees. Then a milch-cow, covered with white cloth, ornamented with gold, specially in her horns, and accompanied by a milking vessel of bell metal, is to be released in the midst of the trees, with her face to the north, so that naturally she proceeds in that direction. The worshipper then is bathed by the priests from the auspicious waters of the installed water-pots to the accompaniment of music and auspicious songs. Having so bathed and attired himself in white cloths, the worshipper honours the priests with appropriate presents. The ground is sprinkled for four days with milk and a homa performed with ghee, barley and black sesamum (s). The formula of dedication is similar to that for consecration of tanks.

Hospitals & educational institutions.

Relief of the sick and spread of education are the favoured objects of charity in all countries and in all ages. I have already referred to the texts of Hindu Smriti writers extolling the merits of establishing a आरोग्यशाला and a पाठशाला. Gifts for education come

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(s) Vide also Chandra Mohan V. Jnanendra—27 C. W. N. 1033, 1035.

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under the category of अतिदान or supreme gift according to the Hindus and imparting of free education has been one of the cherished objects of Hindu donors and philanthropists. It has never been questioned in India that gifts for starting or maintenance of hospitals and educational institutions are valid charitable gifts.

In Haridassi Debi V. Secretary of State for India (t) the testator left a sum of Rs. 1,50,000 for establishment and management of a school and a dispensary and the bequest was held to be valid. In Advocate-General of Bengal V. Belchambers (u) the testator gave a sum of twelve to sixteen thousand rupees for building a lowroofed premises for the establishment of a charitable dispensary and Rs. 50,000/- for carrying it on. The executors were directed to establish the dispensary on a particular plot of land and they were to carry it on with the interest of Rs. 50,000/- which were to be invested in G. P. Notes. It was held by the court that the death of the executors would not by any means affect the gift nor the fact that the specific parcel of land upon which the dispensary was to be erected had ceased to be the property of the testator. In a Bombay case (v) question was raised whether a University which was not a teaching University but merely granted degrees to those who attained to a certain standard of education could be said to be a charitable institution, and a gift to such University could rank as a charitable gift. The question was answered in the affirmative and Sargeant, C. J. in delivering judgment observed as follows:—"The preamble of the Act (the Act of Incorporation) shows that the object and purpose of the legislature in incorporating the University was to afford encouragement to subjects of all classes in the Presidency of Bombay and other parts of India in pursuit of a regular and liberal course of education, and therefore although the University may not be exactly engaged in education, the special object for which it grants degrees is the advancement of

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(t) 5 Cal. 228 (affirmed by the P. C. in 7 Cal. 304).
(u) 36 Cal. 261.
(v) The University of Bombay V. The Municipal Commissioners for the City of Bombay—16 Bom. 217.

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education throughout India, and the University therefore is within the spirit and intendment of the Statute of Elizabeth."

When a student's hostel is erected and maintained by a college as a part of the general educational scheme of the country, the object of the hostel being the advancement of learning, it could be regarded as a charitable institution, and the portion occupied by the resident students could be deemed occupation for charitable purposes, for purpose of exemption from municipal tax (w).

These are the few instances of charitable trusts among the Hindus, which have come up for consideration before our courts of law. As I have said already, no exhaustive enumeration of charitable purposes under the Hindu law is possible, and the expression *Istha* and *Purtta* are themselves elastic and do not admit of a rigid definition. The Statute of Elizabeth has no application in India, nor the law relating to Superstitious Uses, and to decide whether a particular purpose is charitable or not, our courts of law have not got to go into the vexed question whether it comes within the spirit or intendment of the one or is excluded by the other. The decisions of English Judges, based as they are, on the Statute of Elizabeth, are undoubtedly a valuable guide to our courts of law ; but it would be mistake to suppose that what is not charitable according to the opinion of English Judges, is not so under Hindu law. We may say, that all purposes which are held charitable according to English law, are also charitable under Hindu law. But in addition to that, there may be purposes which are charitable according to Hindu ideas, but are not so under the English law. This is particularly true with regard to religious trusts. As has been said already, many of the rules of English law relating to religious trusts are not applicable to the Hindus, and unless and until any particular religious cult savours of immorality, no court of law in India is entitled to say that a trust in respect of the same should not be upheld as being superstitious or idolatorous. Again if the trust in question advances religion according to

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(w) Monie V. Scott—43 Bom. 281.

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ADVANCEMENT OF LEARNING
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the notions of the orthodox Hindu community, it cannot but be regarded as beneficial to the public even though *prima facie* it purports to be for the solace of the founder or his family. Having regard to the custom and usages of the Hindus the scope of purely non-religious charities would also be wider than in English law. In England trusts for the benefit of lower animals not useful to man are held to be not charitable. The Hindu idea of charity is more comprehensive, and includes within its scope the benefit of all sentient beings irrespective of their utility to man. In their pronouncement in the case the Trustees of the Tribune Press Lahore V. Commissioner of Income-Tax Punjab (x), the Judicial Committee approved of the dictum of West, J. in Fatimabibi V. Advocate-General of Bombay (y) that in determining whether an object of bounty is of general public utility in countries to which English ideas and English technicalities may be inapplicable, the courts must in general apply the standard of customary law and common opinion amongst the community to which the parties interested belong. In the case decided by the Judicial Committee (x) a testator by his will declared *inter alia* that his "property in the stock and goodwill of the Tribune Press and Newspaper in Anarkali Lahore" should vest permanently in a Committee of Trustees whose duty it should be "to maintain the said press and newspaper in an efficient condition, keeping up the liberal policy of the said newspaper and devoting the surplus income of the said press and newspaper after defraying all current expenses in improving the said newspaper and placing it on a footing of permanency". There was a surplus income in the hands of the trustees after defraying the expenses of the press and the newspaper and on a reference being made by the Commissioner of Income-Tax as to whether this income was liable to be assessed in the hands of the trustees, the two Judges forming the Bench, differed in their views. Jailal, J. held that it was exempt from assessment as income of property held under trust for charitable purposes within the meaning of

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(x) 66 I. A. 241.
(y) 6 Bom. 42 at p. 50.

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section 4 (3) of the Income-Tax Act. Skemp, J. on the other hand held that it was not exempted. Then there was a reference to the Full Bench and the majority of the Judges (Young, C. J. and Addison, J.) gave their decision against the assessee upholding the view of Skemp, J., while Tekchand, J. dissented. The assessee then took an appeal to the Privy Council and their Lordships allowed the appeal and reversed the decision of the majority of the Full Bench. It was held by the Judicial Committee that the evidence as to the character of the newspaper, as it was conducted in the testator's life time, did not establish that the dominant purpose of the trust was a political one. The object of the newspaper was to supply the province with an organ of educated public opinion which was an object of "general public utility" and accordingly the trust income was exempt from taxation under section 4(3) of the Income-Tax Act. Their Lordships further held that in deciding the question as to whether a particular object or purpose is charitable or not, the true test was, whether the Court considered it to be beneficial to the public and not whether the settlor considered it to be so and expressly relied upon the decision in In Re Hummeltenberg (z) which I have referred to already.

It would be pertinent in this connection to refer to a very recent pronouncement of the Judicial Committee on the question as to what constitutes a charitable trust for purposes of the Indian Income Tax Act. The decision is to be found in All India Spinners' Association of Mirzapore V. Commissioner of Income Tax, Bombay Presidency (a) where the question arose as to whether the profits made by the appellants were income derived from property held under trust or other legal obligation wholly for charitable purposes. The All India Spinners' Association was started as an integral part of a political organization viz. the Indian National Congress with a separate constitution embodied in a written instrument which showed that it was to be a permanent body having an independent existence and power unaffected and uncontrolled by politics. Its object was the development of hand

(z) (1923) 1 Ch. 237.
(a) 49 C. P. N. 1 ; I. L. R. 1945 Bom. 153.

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spinning and *khaddar*. The method by which the Association worked was to purchase hand looms and *charkas* with funds obtained from donation by the public and subscriptions paid by the members and to supply *charkas* free of charge to poor people to be used by them for spinning yarn from raw cotton, also supplied free by the Association. The yarn so spun was supplied to other poor people to be worked by them into cloth on handlooms which the Association supplied free. Both these classes of workers were paid wages, not based on current wages prevailing for similar works but on the basis of giving the workers, as far as possible, an income sufficient to support their families. The Association sold the cloth to the public at a price covering the cost and shop and overhead charges and any surplus raised by such sale was utilised in the same manner as other fund of the Association, there being no division of profits among the members. It was held by the Judicial Committee that the purpose of the Association was relief of the poor and also advancement of an object of general utility viz. getting yarn and cloth manufactured, and producing wages for the persons engaged in such manufacture without any private gain ; and accordingly the income of the Association was exempt under section 4(3) of the Income Tax Act, as income from property held under trust or legal obligation wholly for charitable purpose. Their Lordships reiterated the principle laid down in the Tribune Press case (b) and held that whether a purpose is a 'charitable purpose' within the meaning of the Indian Income Tax Act is to be determined by reference to the language of the definition given there, as applied to circumstances emerging under conditions of Indian life. English decisions as such would have no binding authority though they may sometimes afford guidance.

I now come to the second element of a valid charitable trust, which is that the settlor must be competent in law to create a trust in respect of the property to which the trust relates. Ordinarily every person who can hold or dispose of property may create a trust in respect of it. Under section 7 of the Transfer of Property Act a person who is competent

Settlor must be competent in law to create a trust in respect of the property to which the trust relates.

(b) 66 I. A. 241.

CENTRAL LIBRARY

to contract and is entitled to transferable property or authorised to dispose of property not his own, is competent to transfer such property. Section 11 of the Contract Act lays down that every person is competent to contract who is of the age of majority according to the law to which he is subject and who is of sound mind and is not disqualified from contracting by any law to which he is subject. The transferor therefore must be a major, and of sound mind and must not suffer from any legal disqualification. Every person domiciled in India attains majority on his completing the age of eighteen years, subject to the reservation, that a minor of whose person or property or both, a guardian has been appointed by a Court of Justice or of whose property the superintendence has been assumed by any Court of Wards, attains majority only on completing the age of twenty-one years (c). Under section 7 of the Indian Trusts Act, a trust can be created by or on behalf of a minor with the permission of the principal civil court of original jurisdiction in the district. The Act however does not apply to Hindu religious and charitable endowments. A person is said to be of sound mind, if at the time of making a contract he is capable of understanding it and forming a rational judgment as to its effect upon his interest (d). There may be disabilities of various kinds imposed upon the capacity of a transferor by virture of particular provisions of law. A Ward of Court under section 60 of the Court of Wards Act is incompetent to create any charge or interest in his property so also is the holder under the Chota Nagpur Encumbered Estates Act. A corporation can create a trust only within the limits of its authority.

Disabilities of coparceners and female heirs under Hindu Law.

There are two classes of cases peculiar to Hindu law which require consideration in this connection. The first class relates to cases where the settlor is a comparcener of a joint Hindu family and the property, in respect to which the trust is sought to be created, is joint family property or some interest in it. The coparcener in such cases may be an ordinary member of the joint family or he may be the managing

(c) Indian Majority Act, section 4.
(d) Section 12 of Indian Contract Act.

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member or Karta, and in the latter case he may be the father, or any relation other than the father.

The other class comprises cases where a Hindu widow or other female heir succeeds by inheritance to the property of her husband or any other male relation, and acquires only restricted rights in the inherited property.

As regards the first class of cases, there is no difficulty so far as the Bengal Law is concerned. According to Dayabhag, the father has absolute rights of alienation not only in respect to his separate or self acquired property but in respect to his ancestral property as well, both movable and immovable which he inherited from his ancestors. The sons have no right by birth in any such property and consequently the father can dispose of property by way of a religious or charitable trust without in any way being fettered by the rights of his sons (e). A joint family according to Dayabhag can come into existence only after the death of the father and it can subsist between persons, who have either jointly inherited property or acquired it with joint funds or joint labour. Even in such cases every coparcener is entitled to a definite though unascertained share of the joint property and he may dispose of such share in the same way as if it were his separate or self acquired property. It is open therefore to an undivided coparcener in a Dayabhag family to make a gift or trust for religious or charitable purpose and it would be valid to the extent of his share in the joint property.

In Mitakhara joint family however the position is entirely different. There, the rights of each coparcener extend to the whole of the family property and nobody can say what interest he has got, so long as his share is not ascertained by partition. In case of death before partition, the share of a coparcener passes, not by inheritance, but by survivorship to certain specified relations. Strictly speaking therefore the joint family property cannot be the subject of a gift, sale or mortgage by one coparcener except with the consent either express or implied of all the

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(e) Vide Mayne's Hindu Law, 10th Edn. p. 461.

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other coparceners (f). The strict anti-alienation theory of Mitakhara has been departed from, to some extent, in certain provinces like Madras, Bombay, Berar and Central Province, and it has been held in these provinces that an undivided coparcener can, for valuable consideration, sell, alienate, or otherwise encumber his interest in the joint property (g), though Bengal and U. P. still adhere to the old view. The liberal view adopted in Madras, Bombay and other provinces is however immaterial for our present purpose ; for the exception in these provinces is made only when the transfer is for value, and not when it is gratuitious. As a charitable trust is *exhypothesi* a voluntary transfer, it must be held to be outside the competency of an undivided coparcener to make an alienation of his undivided interest for purposes of charity. A bequest for charitable purpose stands on a worse footing ; for as soon as the coparcener dies the rule of survivorship operates and excludes the rights of the legatee (h).

A manager or Karta of a joint family has indeed extended powers, and he can alienate any portion of the family property—and not merely his own share —either for family necessity or for the benefit of the family so as to bind the interests of all undivided coparceners, no matter whether they are minors or adults (i). The foundation of this doctrine is to be found in the text of *Vyasa* which is quoted and relied upon by Vignaneswar and which runs as follows :— "Even a single individual may conclude a donation, mortgage or sale of immovable property during a season of distress, for the sake of the family and especially for pious purposes" (j). Vignaneswar's own view is that these powers can be exercised by the manager during the minority of the other coparceners (k) ; but it is now settled that when there is a justifying necessity for the alienation, the other coparceners will be bound even though they are adults (l). The expression 'pious purpose' in the text of *Vyasa*

(f) See Sahu Ram Chandra V. Bhup Singh—44 I. A. 126.
(g) Vide Mayne's Hindu Law p. 491 (10th Edn.).
(h) Ibid p. 495.
(i) Ibid p. 469.
(j) Mitakhara I (i) 28.
(k) Mitakhara I (i) 29.
(l) Mayne's Hindu Law p. 468, 10th Edition.

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means, according to Mitakhara, 'the indispensable religious duties' such as the obsequies of the father and the like. The words "and the like" indicate that they are not confined to funeral obsequies merely, but extend to other religious ceremonies like marriage, upanayan etc. which are all obligatory upon the Karta to perform, in discharge of his duties as head of the family. An alienation of family property would be justified, if it is necessary for such purposes. The question now arises as to how far a Karta is entitled to alienate family property for a religious or charitable purpose which is not obligatory on him. The judicial decisions on this point do not seem to be quite uniform.

Strictly speaking, no alienation of family property can be supported when the religious rites are optional or personal in their character, but the trend of judicial opinion seems to be that a gift of a small portion of the family estate by the Karta cannot be questioned by other coparceners, when the object of the gift is meritorious from the point of view of religion or charity, though there was no obligation on the donor to make the gift. In the case of Rathnam V. Siva Subramanya (m) a gift by will of Rs. 600/- by the father of a family for supplying a silver image to a Pagoda was held to be not binding on the undivided coparceners. The ground of the decision was not that the gift was bad as it was not for an obligatory religious duty, but that the law of survivorship took effect as soon as the testator died, and there was nothing left upon which the will could operate. In an early Bengal case (n) it was decided on the opinion of the Pandits who were consulted in the matter that a gift of a small portion of joint family property for religious purpose was a valid gift binding on all the members of the family. This was followed by the Allahabad High Court in Raghunath V. Govind (o) where a father was held entitled, without the son's consent, to make alienation of joint ancestral property for providing a permanent shrine for the family idol ; and the same view was taken in the subsequent decision in Sri Thakurji V. Nand

(m) 16 Mad. 353.
(n) Gopal Chand V. Babu Kumar—5 S. D. A. 24 (1843)
(o) 8 All. 76.

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Ahir (p). In Ramlinga Chetti V. Sivachidambara Chetty (q) there was dedication of a small quantity of family estate by the father to an idol on the occasion of the funeral of a deceased member of the family. The gift was upheld and Shesagiri Ayyar, J. in his judgment expressly held that it was covered by the text of Mitakhara referred to above. In Mathuswami Pillai V. Dorasami Pillai (r) however a gift by a Hindu father of some property to an idol was held to be invalid, and the decision in Raghunath V. Govind (s) was distinguished on the ground that it was a case of a family idol, a gift to whom was sanctioned by Hindu law. In the recent pronouncement of the Judicial Committee in Gangi Reddi V. Tammi Reddi (t) a dedication of a portion of the family property, which was small as compared with the total means of the family, for the purpose of carrying on a *choultry* was held to be within the powers of a Karta or father. As running a *choultry* is not an indispensable religious duty, it must be deemed to be settled now that even for optional religious works a manager is competent to transfer a small portion of the family property.

The powers of a father as manager are not wider in this respect. The texts indeed concede to the father and absolute control over 'pearls, gems and corals' but this does not mean that he is at liberty to alienate the ancestral moveables in any way he likes. He can only make affectionate gifts of these properties which an ordinary manager cannot (u).

Disabilities of a Hindu female heir in respect to property inherited from a male.

The powers which are exercisable by a Hindu widow who takes a limited interest in the property inherited from her husband in the matter of religious and charitable gifts have been the subject matter of various decisions both by the High Courts in India as well as by the Judicial Committee. One of the earliest pronouncements on the subject is that of Turner L. J. in Collector of Masulipatam V. Cavaly Vencata (v) where the law was stated

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(p) 43 All. 560.
(q) 42 Mad. 440.
(r) 11 M. L. J. 310.
(s) 8 All. 76.
(t) 54 I. A. 136.
(u) Mayne's Hindu Law p. 464 (10th Edn.).
(v) 8 M. I. A. 529.

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to be as follows :—"The widow cannot, of her own will, alien the property except for special purposes. For religious and charitable purposes or those which are supposed to conduce to the spiritual welfare of her husband she has a larger power of disposition than that which she possesses for purely worldly purposes. To support an alienation for the last she must show necessity". This is quite in accordance with the views of Smriti writers according to whom the widow takes the estate of her husband primarily for the performance of religious duties which are instrumental in conveying her husband, though abiding in another world, and herself to a region of bliss (w). The Judicial Committee pointed out expressly in Sardar Singh V. Kunj Behari (x) that "the Hindu system recognises two sets of religious acts. One is in connection with the actual obsequies of the deceased and the periodical performance of the obsequial rites prescribed in the Hindu religious law which are considered as essential for the salvation of the soul of the deceased. The other relates to acts which though not essential or obligatory are still pious observances which conduce to the bliss of the deceased's soul". With reference to the first class of acts their Lordships observed : "the powers of a Hindu female who holds the property are wider than in respect of the acts which are simply pious and if performed are meritorious so far as they conduce to the spiritual benefit of the deceased. In the one case if the income of the property or the property itself is not sufficient to cover the expenses, she is entitled to sell the whole of it. In the other case she can alienate a small portion of the property for the pious or charitable purpose she may have in view."

This must now be taken to be the authoritative statement of law on the subject. In this case a Hindu widow in possession of the estate of her deceased husband made a gift, by deed, of immovable property forming about 1/75th of the whole estate for the observance of *bhog* to the deity Jagannath at Puri temple and for the maintenance of the priests of the temple. The gift which was made in pursuance of a

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(w) Vide Dayabhag Chap. XI, sec. 1, cl. 43.
(x) 49 I. A. 383.

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vow made by the widow upon a pilgrimage to the temple was stated in the deed to "be for the salvation of her husband and his family members and my own salvation." It was held that the alienation was valid, the gift being for the spiritual benefit of the deceased husband though not for the performance of an essential observance, and the amount of property alienated being a small portion of the entire estate. Their Lordships in course of their judgment cited with approval the decision of the Madras High Court in Tatayya V. Garimilla Ramkrishnamma (y) and that of the Calcutta High Court in Khublal V. Ajodhya (z). In the first of these cases, a Hindu daughter who succeeded to the property of her father made a gift of a small portion of the property at the time of performance of her father's 'Sradh' ceremony on the occasion of *Pushkaram* at Raj Mahendry, a particularly holy event amongst the Hindus which happens once in twelve years. The gift was held to be valid and binding on the reversioners. The learned Judge in coming to the decision relied on the fact that it was a duty of the daughter to perform the Sradh of her father and the gift of land which was only of a very small fraction of the entire estate was a suitable appendage to the sradh ceremony, and was considered highly meritorious according to ceremonial treatises. The learned Judges further held that it could not be laid down as a rule of law that to justify the alienation the gift must be for spiritual necessity. It was sufficient if the gift or expenditure had reference to the spiritual needs of the husband or the father whose property was taken. It should be noted here that though the performance of the *Sradh* of the late father was an indispensable religious duty which the daughter was bound to perform, the gift of land as an appendage to the *Sradh* was quite optional and was not a necessary or an integral part of the ceremony. But as the act was meritorious and would enhance the spiritual efficacy of the *Sradh* which was aimed at securing the salvation of the deceased proprietor, and as the property given was very small the gift was upheld.

(y) 34 Mad. 288.
(z) 43 Cal. 574.

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In the other case a Hindu widow who succeeded to the estate of her husband created two permanent leases in respect of certain lands for the purpose of raising money for excavating a tank and constructing the wall of a temple established by the husband himself during his life time. On a suit by the reversioners for avoiding the leases, the courts below decreed the suit being of opinion that the leases were not supported by legal necessity. On second appeal to the High Court this decision was set aside. Mr. Justice Mookerjee, in delivering judgment, pointed out that the transfers were clearly for a religious purpose. The water of the tank which was contiguous to the temple would be needed for purposes of ablution and worship, but even apart from this, the excavation and consecration of a tank were themselves acts of high religious merit, as authoritatively laid down in various ceremonial treatises. Having regard to the value of the entire estate, the alienation of the land in suit which was a little over 1/5th of the total inheritance could not be said to be unreasonable. On the point as to whether the religious act could be said to be conducive to the spiritual welfare of the husband, the learned Judge held that according to a text of Brihaspati quoted by Dayabhag (Vide Dayabhag Chap. XI, section 1), the husband and the wife participate in the effects of good and bad actions and their mutual relation was not dissolved by the death of either partner. The position, therefore, comes to this, that whatever secures religious merit to the wife is spiritually efficacious to the husband as well.

I will presently show that this view has not been accepted in many other decisions, where the learned Judges have insisted on the gift being made pointedly for the spiritual welfare of the husband in order that it might be regarded as valid in law. In Ram Kamal Singh V. Ram Kishore (a), a Hindu widow inheriting her husband's property executed a deed of endowment in favour of the Pujari of a Thakurbari established by her husband's mother. The gift was held to be not binding on the reversioners, firstly on the ground that the dedication was one for the spiritual welfare of the widow herself and not of her husband ;

(a) 22 Cal. 506.

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and secondly because the property dedicated was of considerable value. The view taken on the first point is certainly contrary to that taken in the later case of Khublal V. Ajodhya (b) referred to above, though the decision itself can be supported on the second ground. In Puran Dai V. Jai Narain (c) a Hindu widow made a gift of a house to her family priest, the gift being described in the document as being made for the 'satisfaction of God Vishnu'. The gift was held to be invalid as it was not made for the spiritual benefit of her husband, but was an offering by the widow to a favoured idol, for her own special credit and special advantage. This decision was followed by the same High Court in the subsequent case of Sham Dei V. Birbhadra (d). Referring to the decision of the Calcutta High Court in Khublal V. Ajodhya (e) the learned Judges observed that however much the doctrine, that an act conducive to the spiritual benefit of the wife must necessarily be for the spiritual welfare of the husband as well, might apply to persons governed by Dayabhag law, it was not recognised by Mitakhara at all. At any rate, they considered themselves bound to follow the earlier decision of their court in Puran Dai V. Jai Narain (f). The same view has been taken by the Patna High Court in Thakur Prasad V. Musst. Dipa (g), by the Lahore High Court in Munshilal V. Musst. Shiv Debi (h) and by the Judicial Commissioners of Oudh in Har-mitra V. Raghubar (i). Mookherjee. J. himself pointed out in Khublal V. Ajodhya (j) that there were several reported cases where a distinction was drawn between acts of which the religious merit is acquired solely by the female heir and acts of which the religious merit accrues to the deceased or is shared by the female heir with him. The learned Judge was apparently in favour of the view taken by Pandit Pran Nath Saraswati in his Tagore Lectures

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(b) 43 Cal. 574.
(c) 4 All. 482.
(d) 43 All. 463.
(e) 43 Cal. 574.
(f) 4 All. 482.
(g) 10 Pat. 352.
(h) 4 Lahore 336.
(i) 3 Luck. 645.
(j) 43 Cal. 574.

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on the Law of Endowment that this distinction is groundless. I do not think that on the authorities as they stand, it is possible to take this extreme view. The text of Brihaspati upon which reliance is placed in this connection runs as follows :—"In scripture and in the Code of Law as well as in popular practice a wife is declared by the wise to be half of the body of her husband equally sharing the fruits of pure and impure acts."

One cannot subscribe to the view taken by the Judges of the Allahabad High Court, that this doctrine is peculiar to Dayabhag and does not apply to people governed by the Mitakhara law. Mr. Justice Dhavle rightly pointed out in Thakur Prasad V. Musst. Dipa (k) that the identical passage of Brihaspati has been quoted by *Apararka* in his Commentary on Yagnavalka, and Apararka's name stands high as a commentator of the Mitakhara school. Theoretically every act of charity or religion on the part of the wife may be regarded as conducing to the spiritual benefit of the husband as well. But if this principle is applied in practice, the result will be that any expenditure which is not for a sinful object and any alienation by way of gift which is always meritorious according to Hindu ideas, might be attempted to be justified as ministering to the spiritual benefit of the husband. The so-called limited estate of the Hindu widow will in that event be altogether unlimited. I think that the true principle has been enunciated by the Judges of Madras High Court in Tatayya V. Ram Krishnamma (l) where they say, that although the spiritual purposes are too numerous to be mentioned, some limitations must be imposed on them and to justify an alienation by a Hindu female heir, the object must be regarded by Hindu community as reasonable and proper and it must have reference to the spiritual needs of the father or husband whose property is taken.

It is not disputed that the text of Brihaspati quoted above has no application to any female heir other than the widow of the deceased proprietor.

The gift of the female heir, as I have said, must

(k) 10 Pat. 352.
(l) 34 Mad. 288.

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be of a small and reasonable portion of the inherited estate. Whether this is so or not is always a question of fact which must depend on the circumstances of each individual case. Several decided authorities may be referred to in this connection by way of illustration. In Ram Chandra V. Ganga Govind (m) the Pandits gave their opinion that the widow might properly alienate 3/10th of the property inherited. A gift of more than 1/4th and less than 1/3rd was declared to be valid in Churaman V. Gopi (n). A transfer of 2 bighas out of 10 bighas has been held to be proper (o), and so is a gift of 1 bigha 4 cuttas out of 12 bighas (p), the object in both cases being the excavation and consecration of tank. A gift of about 1/11th of the estate to the husband's purohit on the return of the widow from a pilgrimage to Gaya (q) and a gift of 1/6th of estate for building a temple for her husband's and her own salvation (r) have been pronounced to be proper. In Lakhmi Narayan V. Dasu (s) the two wives of a zemindar granted a very small portion of the zemindary to a Brahmin who had been brought up by them with a view that he should perform the funeral obsequies and annual *sradhs* of their deceased husband. The gift was held to be binding on the successor of the zemindar. In a Patna case (t) even a gift of 1/3rd of the property was held to be invalid, though another reason was put forward viz. that the gift was not made on an auspicious occasion. A gift of practically the whole estate of the widow or a considerable portion of it can never be supported (u). To judge the reasonableness or otherwise of a disposition made by a widow for religious purposes, the only thing to be looked at is as to what part of the total estate has been alienated by her. The necessities of the deity, to which the dedication has been made, have absolutely no bearing on the question (v)

(m) 4 Mad. Sel. Rep. 147.
(n) 37 Cal. p. 1.
(o) Khublal V. Ajodhya—43 Cal. 574.
(p) Ramsurat V. Hita Nandan—10 Pat. 474.
(q) Govinda V. Lakshmi—43 All. 515.
(r) Kristomurti V. Lingayya—AIR 1936 Mad. 677.
(s) 11 Mad. 288.
(t) Radhamadhab V. Rajendra—12 Pat. 727.
(u) Panchand V. Manoharlal—42 Bom. 136.
(v) Madanmohan V. Rakhal—57 Cal. 570.

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LECTURE III.

Essentials of a valid religious and charitable Trust (continued).

I now come to the third essential element of a charitable trust which relates to the way in which the trust is to be expressed, and the formalities that are necessary to create it.

In English law, no technical expressions are needed to create a trust. In the language of Eldon, L. C. the essential prerequisites of a valid trust are three in number. In the first place the words must be such that the whole thing might be construed as imperative. In the second place the subject matter of the trust, that is to say, the property to be affected by it, is to be described with reasonable certainty ; and thirdly, the object or persons to be benefited must be certain (a). If the trust is of property other than land, and is not a testamentary trust, it can be created verbally in England. In case of trust relating to land or to an interest in land, the Statute of Frauds required that it should be evidenced by some form of writing signed by the settlor. This provision of the Statute of Frauds is now repealed by section 53 (1) of the Law of Property Act 1925, which lays down that a declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will (b). A testamentary trust obviously requires a duly attested will or codicil. In English law the assurance of certain kinds of property for charitable purposes is subject to various legislative restrictions. These restrictions were imposed by the Mortmain Act, and by the Statute 9 George II Chap. 36, which was commonly called the Statute of Mortmain. All these statutes were repealed by the Mortmain and Charitable Uses Act of 1888, which however re-enacted the provisions of the earlier laws in a modified form. Under Part II of the Mortmain and Charitable Uses Act 1888, an

Formalities of a valid trust under English law.

Statutory restrictions on settlor's rights in case of charitable trusts.

(a) Per Lord Eldon in Knight V. Knight—(1840) 3 Beav. 148.
(b) Vide section 5.

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assurance of land (including tenements, hereditaments, corporeal and incorporeal or of whatever nature and any estate and interest in land) and of personal estate to be laid out in the purchase of lands, for any charitable purpose whatever, is void unless the requirements of the Act are complied with. The requirements are that the assurance must take effect in possession for the charitable use intended, immediately from the making of it, and must be without any power of revocation, reservation, condition or provision for the benefit of the assurer (c). As these requirements could not be satisfied when the disposition was by will, the result was that property of the kinds which came within the purview of the Act could not be given to charitable purposes by any testamentary document, subject to certain exceptions which were provided by the Act itself. The later Mortmain and Charitable Uses Act 1891 expressly provides that land may be assured by will upon charitable trusts, but requires the land so assured to be sold within a year from the testator's death or such extended period as the court or the charity commissioners may allow (d). The Mortmain Acts have no application in India (e). So far as the Hindus are concerned there is no restriction on their powers to create a charitable or religious trust by a will. Section 118 of the Indian Succession Act which forbids a person having a nephew or niece or any nearer relation to bequeath any property, to religious or charitable uses, except by a will executed not less than twelve months before his death, and deposited within six months from its execution in some place as mentioned in the section, has no application to the Hindus.

No restrictions in Hindu law.

Section 5 of the Indian Trusts Act lays down that no trust in relation to immovable property is valid unless declared by a nontestamentary instrument in writing signed by the author of the trust or the trustee and registered ; or by the will of the author of the trust or the trustee. No trust in relation to immovable property is valid unless declared

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(c) See section 4, sub-sections 1, 2 & 3.
(d) See Tudor on Charities pp. 88, 89 (5th Edn.).
(e) Mayor of Lyons V. East India Company—1 M. I. A. 175, explained in Sarkies V. Prosonnamoye—6 Cal. 794.

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as aforesaid or unless the ownership of the property is transferred to the trustee. The Act is applicable to Hindus, but section 1 of the Act expressly saves from its operation all religious and charitable endowments either public or private. Thus except where a religious or charitable trust is created by a will it is quite competent to a Hindu to dedicate, for religious or charitable purpose, any immovable property without any document in writing. The operation of section 5 of the Indian Trusts Act is specifically excluded from such cases by the saving provision of the Act itself and it cannot be said that an endowment of property for religious or charitable purpose is a gift within the meaning of the Transfer of Property Act. It is undoubtedly possible for a founder to dedicate property in the form of a gift, he can also, if he likes, create a trust through the medium of trustees ; but neither of them is necessary. As was said by Sale, J. in Bhuggobutty Prosonno V. Gooroo Prosonno (f), no express words of gift either directly or indirectly in the shape of a trust are required to create a valid dedication ; all that is necessary is that the religious purpose or object of the donor shall be clearly specified and that the property intended for the endowment should be set apart and dedicated to those purposes. As I have said already in the Introductory lecture, according to Hindu ideas dedication is something different from secular gift, which presupposes acceptance by a sentient being. According to the Chandogya Upanishad, "He who presents an oblation has made an offering in all worlds, in all beings, in all souls". A dedication really benefits the entire universe which is pervaded by the divine spirit, though ostensibly it might be made in favour of a particular deity or temple. *Sankalpa* and *Utsarga* are the two religious formalities through which dedication is ordinarily effected by a pious Hindu. By *Utsarga* or *Samarpanam*, the founder renounces his ownership in the property dedicated, while the *Sankalpa* or formulary resolve indicates the purpose for which renunciation is made. It is not necessary that any particular person should accept the property dedicated as is

No writing is necessary in Hindu law except when trust is created by will.

For a valid dedication to religious or charitable purpose under Hindu law, neither the form of gift nor of trust is absolutely necessary.

(f) 25 Cal. 112.

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Essentials of dedication in Hindu law.

required in a secular gift. "A Hindu who wishes to establish a religious or charitable institution may, according to his law, express his purpose and endow it, and the ruler will give effect to the bounty or at least protect it so far, at any rate, as is consistent with his own *Dharma* or conception of morality" (g).

There are a large number of decided cases where it has been held, that to constitute valid dedication of property by a Hindu for religious or charitable purpose no document in writing or registered is necessary. In Ramlinga Chetti V. Siva Chidambaram (h) a manager of a joint Hindu family had dedicated a small portion of the family lands to an idol of a temple. The validity of the dedication was impeached *inter alia* on the ground that there being no registered document executed by the donor, no title vested in the temple. This contention was negatived and it was held by the learned Judges that the dedication was quite valid and proper. Seshagiri Ayyer, J. in delivering judgment observed as follows :—"There are various modes of giving property to a temple. One is by giving it to the trustees. In that case, the provisions of the Transfer of Property Act must be complied with. Another is by dedication to the idol itself. If this is in writing, it is open to argument that by virtue of Registration Act no title would pass unless the document is registered. The third mode is the one which is observed on occasion of marriage or death. Although the donor may intend that the embodiment of the universal soul worshipped in a particular place should have the benefit of the dedication, the words employed by him and the object aimed at by him are what has been indicated in the Chandogya Upanishad and in the formula referred to above. In these cases, the gift is not to any sentient being real or artificial so as to attract section 5 of the Transfer of Property Act".

In a later case before the same High Court (i) one of the questions raised was whether the deceased *Karta* of a joint Hindu family had made an effective dedication of the profits of a usufructuary mortgage

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(g) Per West, J. in Monohar Ganesh V. Lakhmiram—12 Bom. 247, 263.
(h) 42 Mad. 440.
(i) Tami Reddi V. Gangi Reddi—45 Mad. 281.

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for the expenses of choultry. The *Karta*, by his will, stated that the usufructuary mortgage was his self-acquired property and directed that the profits should be applied to meet the expenses of a choultry. It was proved by evidence at the time of trial that the property belonged to the joint family, and consequently it was not competent to the manager to dispose it of by will. Attempt was made thereupon to show that the *Karta* had made a valid dedication during his life time. The trial court held that the mere fact of spending some income of the property to defray the expenses of the *choultry* was not sufficient to prove dedication of the corpus. On appeal, the High Court of Madras held otherwise and came to the conclusion that there was a valid dedication during the life time of the manager as was proved by spending the income of the property in maintaining the *choultry* and that no document was necessary to prove dedication. There was an appeal to the Privy Council (j) and their Lordships of the Judicial Committee reversed the decision of the High Court and allowed the appeal. It was held that the mere fact that the *Karta* paid the expenses of the *choultry* out of the profits of the family property would not establish a dedication of the property to the charity when the expenses did not exhaust the entire profits. The Judicial Committee however expressly affirmed the proposition of law enunciated by the High Court of Madras that a dedication of a portion of the family property for the purpose of a religious charity may, according to Hindu law, be validly made without any instrument in writing, even if it be appropriation of some landed property. Reference may be made in this connection to a Full Bench decision of the Madras High Court in Narasimha V. Venkatalingam (k) where it was held following an earlier pronouncement of the same High Court in Pallayya V. Ramavadhunulu (l) that a gift to God Almighty is not a gift to a living person within the meaning of the Transfer of Property Act and consequently section 123 of the Act read with section 5 does not apply to such a gift so as to require a

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(j) See Gangi Reddi V. Tami Reddi—54 I. A. 136.
(k) 50 Mad. 687 (F. B.).
(l) 13 Mad. L. J. 364.

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registered document for its making. In this case the gift was not to any particular idol but to Sree Kothondo Ram Moorthy the Almighty and the document was really not a deed of gift but purported to be a record of a past transaction. I must say that the proposition of law laid down by the learned Judges viz. that section 123 of the Transfer of Property Act will not apply when the gift is not to any particular deity but to God Almighty is open to doubt. As you will see later on the true theory of Hindu sages is that the gift is made not to any visible image but to the invisible spirit which resides in it. An idol is a juristic person in Hindu law which is capable of holding property in the same way as a natural person, and it is quite usual for a pious Hindu to execute a deed of gift or *arpannama* in favour of an idol. Even if it can be said that the expression "living person" in section 5 of the Transfer of Property Act does not include all kinds of juristic persons, section 17 of the Registration Act would undoubtedly operate when the dedication is by deed, and make it wholly inoperative unless it is registered. An *arpannama* by which immovable property is given to certain specified deities must rank as a deed of gift which is compulsorily registrable under section 17(a) of the Registration Act and it would have to be a stamped as such (m). Similarly if a settlor wants to transfer property to trustees who are to hold it for specific purposes of religion or charity, the deed of settlement or trust if it relates to immovable property of the value of one hundred rupees or upwards would require registration. The whole thing therefore depends upon the way in which the endowment is created. If the endower employs the form of gift and purports to execute a deed of gift of certain property in favour of an idol or any religious or charitable institution, or if he attempts to transfer immovable property of the value of rupees one hundred or upwards to trustees in whom it is to vest for the object of the trust, he cannot by any means, avoid the law of registration. On the other hand, it is quite open to him to create an endowment merely by renouncing his rights in specific property and indicating the

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(m) See Bhoopatinath V. Basanta—63 Cal. 1098, 40 C. W. N. 1320.

CENTRAL LIBRARY

particular religious or charitable purpose for which the property is to be used. No deed is necessary, and no trustee need be appointed, and the law will impose the duties of trustee upon the founder or his heir, or such other persons, as might have control over or possession of the endowed property. Thus the essential formalities for the creation of a religious or charitable endowment according to Hindu law are : firstly the property in respect of which the endowment is made must be designated with precision ; secondly the object or purpose of dedication should be clearly indicated, and thirdly the founder must effectively divest himself of all beneficial interests in the endowed property (n).

Ceremonies of Sankalpa and Samarpan though relevant are not essential ; intention the real test.

As I have said already, a Hindu while dedicating property to a deity or any other religious or charitable object ordinarily goes through the ceremonies of *Sankalpa* and *Samarpan*. It cannot be said however that these ceremonies are essential to the creation of an endowment. The performance of these ceremonies is only relevant to show the intention of the grantor, and if there is clear and unequivocal manifestation of intention to create a trust and there is formal divesting of ownership in the property on the part of the donor with the intention to devote it to religious or charitable purpose, dedication must be deemed to be complete (o). The absence of religious ceremonies would be an item of evidence which has to be taken into consideration along with other evidence for the purpose of determining the real intention of the donor. On the one hand the mere performance of the ceremonies would not be conclusive if it is established from other evidence that there was no real intention to create an endowment. Mere forms are not enough, there must be a real *Sankalpa* and a real *Samarpan* (p). On the other hand absence of these ceremonies would not be material if the other evidence is sufficient to establish dedication. The dedication of property is not a *sacrament* but a secular

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(n) Vide Bhagubutty V. Gooroooprasanna—25 Cal. 112 ; Prafulla V. Jogendra—9 C. W. N. 528 ; Maruti Ram Rao V. Mallapur Sri Gopal Krishna—34 Bom. L. R. 415 ; Satwanti Kuer V. Ambica Prasad—A. I. R. 1939 Pat. 45.

(o) Premnath V. Hariram—16 Lah. 85.

(p) Deo Saran V. Deoki—3 Patna 842.

CENTRAL LIBRARY

act. The only difference between dedication and secular gift is that no acceptance is necessary in the former ; mere renunciation of ownership by the donor with a particular object being sufficient to create an endowment (q). In a case decided by the Lahore High Court the donor had declared in unequivocal terms that the house in question was set apart for being used as a resting place for the marriage processions of the *Khatris* of the locality. There was more than one tablet in the house indicating its wakf nature, and it was proved that the dedicator had requested the Governor of Punjab to perform its opening ceremony and all the leading men of the locality were present on that occasion. It was held on these facts that dedication was proved even though the son of the dedicator had used a part of the house for his own residence and another part was used as a Girls' School (r). In another case decided by the same High Court, the facts were that a *dharamsala* was built by a person in accordance with the wishes of his predecessor, but there was no express dedication to the public, or performance of *Sankalpa* and *Samarpan* ceremonies. It was proved that the Dharamsala was used by the public but with the permission of the owner. It was held that these facts were insufficient to prove dedication (s). When there is a deed of dedication executed by the donor, the mere execution of the document though it purports on the face of it to dedicate property to religious or charitable uses, is not enough to constitute a valid endowment. It must be proved that the donor intended to divest himself of his ownership in the property dedicated. "The tests of a *bona fide* or nominal endowment are ; how did the founder treat the property or how have the descendants treated it ; has the income of the endowed lands been continuously applied to the object of dedication"? (t). In Kashiswaree V. Krishna Kamini (u), their Lordships after construing the deed in the case to be a deed of dedication said : "The lower court has not.....tried the fact

Mere execution of document not enough, if there was no intention to act upon the deed.

(q) Ram Swarup V. Thakur Ramchandraji—A. I. R. 1935 Nag. 35.
(r) Jaidayal V. Dewan Ram—I. L. R. 1938 Lahore 704.
(s) Chandulal V. Rampat—A. I. R. 1933 Lah. 189.
(t) Ganga Narain V. Brindabun—3 W. R. 142.
(u) 2 Hay. 557.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

of the *bona fide* nature of the endowment with reference to the use of the proceeds from the time of the confirmation of the endowment exclusively for religious and pious purposes, but has confined its decision to the inference drawn from the wording of the deeds.....If however the results of this enquiry establish that Koylas himself never intended that the proceeds were so to be used and accordingly they were not so used the case for the plaintiff must fail". In order to establish a valid endowment it must be proved that the grant was made with the intention that the profits should be applied for the particular religious purpose and that the profits have been so applied (v). No endowment is created if the deed was not meant to be acted upon and the founder had other or ulterior motives, e.g. tying up of property in the family or keeping the property out of the reach of the creditors. When however the acts and conduct of the parties show that the income of the property was employed in the performance of religious rites laid down by the founder, the mere fact that the members of the grantor's family were nominated shebaits, or they were to be remunerated out of the endowed fund are not proper grounds for holding the dedication to be nominal (w). In Watson V. Ramchand (x) the question arose regarding the validity of an endowment created by one Pudmolochan. There were two deeds executed by Pudmolochan, but it was proved that from the time of the execution of the deeds until after the death of Pudmolochan—a period of about three years and three months—no change took place in the accounts or in the management of, or dealing with the business or estates or the proceeds thereof. Mortgages were executed in which Pudmolochan joined and everything appears to have gone on in the same manner as if the deeds had never been executed. In these circumstances, it was held by their Lordships of the Judicial Committee that the deeds were fictitious or benami and no effective or genuine endowment was created. In a case which came up

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(v) Vide Madhab Chandra V. Srimati Rani Sarat Kamini—15 C. W. N. 126 ; Bhekdhari Singh V. Sri Ram Chandrajee—10 Pat. 388.
(w) Sri Sri Iswar Lakhmi Janardan V. Khitish—55 C. L. J. 26.
(x) 18 Cal. 10 (P. C.).

CENTRAL LIBRARY

before a Full Bench of the Allahabad High Court (y) a Hindu purported to dedicate practically the whole of his property to an idol by a deed of endowment executed sometime before his death. It was provided in this deed that the settlor should apply for mutation of names in favour of the idol, and that he should use the income of the property for the expenses of Puja and Rajbhog and for the repairs of the temple and that he should keep regular accounts of the income and expenditure. The settlor himself was to be the first manager, after him his wife, and thereafter his daughter's sons and their descendants. Some sixteen months after the execution of this deed, the settlor died and was succeeded as manager by his wife. The widow brought a suit for a declaration that the property was endowed property, and in course of trial it was proved that no attempt was made to obtain mutation of names, that no accounts were forthcoming relating to the administration of the property by the settlor, that the expenditure for the idol did not amount to more than one-tenth of the income, and that the widow was unable to account for her own dealings with the property which was the subject matter of the suit. It was held that these circumstances showed that there was no real dedication of the property to religious purpose but only an attempt to create a perpetuity in favour of the descendants of the settlor's daughter. Of course if a valid dedication is once complete, there would be no power left in the donor to revoke it and no assertion on his part, or the subsequent conduct of himself and his descendants contrary to such dedication would have the effect of nullifying it (z). It may be stated here that when an endowment is created by a will and is to take effect on the death of the testator, then unless there is evidence to show that the testator gave directions during his own life time contrary to the terms of the will, his mode of dealing with the property is irrelevant for the purpose of determining as to whether the endowment is real or fictitious. The acts of the manager after the death of the testator contrary to the terms of the endowment cannot also

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(y) Sri Thakurjee V. Sukhdeo Singh—42 All. 395 (F. B.).
(z) See Dasami Sahu V. Param Shameswar—51 All. 621.

CENTRAL LIBRARY

be regarded as reflecting the intentions of the testator (z[1]). The question whether a dedication is real or nominal generally comes for considerations in case of endowments in favour of idols. Another question which frequently arises in this connection is whether the dedication is absolute and vests the property absolutely in the idol, or is partial only and creates a charge, for religious purposes, upon secular property. We will discuss those questions in a subsequent chapter.

Uncertainty of the subject matter or purpose of the trust fatal to the creation of a valid trust.

Certainties of the subject matter, and object or purpose are essential in all endowments, and if an endowment is created through the instrumentality of trust, it is further necessary that the directions to the trusees should be given in imperative terms. If it is left to the discretion of a trustee to devote a fund to a charitable or non-charitable purpose at his option no valid charitable trust can be created. As was said by the Judicial Committee in Mussori Bank V. Raynor (a) "the words of gift used by the testator must be such that the court finds them to be imperative on the first taker of the property and that the subject of the gift must be well defined and certain." If a gift in terms absolute is accompanied by a desire, wish, recommendation, hope or expression of confidence that the donee will use it in a certain way, the tendency of modern decision in England is not to construe these precatory words as imperative and creating a trust although the earlier decisions of the Chancery Courts were really in the opposite direction (b).

Any uncertainty regarding the subject matter of the gift would be fatal to the creation of a religious or charitable trust. Thus where a testator gives a direction in his will that money should be spent for a certain charity, but the amount is not mentioned, ordinarily the gift would fail. But if the object and scope of the trust are defined with accuracy and the gift is of such a sum of money as would be reasonably necessary to fulfil the object, the trust will be upheld. Thus a bequest made to found a hospital for the benefit of 100 boys to be conducted on the same lines

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(z[1]) Sivakanta V. Rajaram (1950) A. I. R. Assam 154.
(a) 9 I. A. 70 at p. 79.
(b) See Underhill on Trusts and Trustees p. 25 (9th Edn.).

CENTRAL LIBRARY

as an existing institution was held to create a valid charitable trust (c). In a Bombay case (d) the will of a Hindu testator contained, among others, the following directions :— .. .. .. "(10) In my country at the village Shri Anjar, I am at present carrying on *Sadavart*. Similarly out of my fund my trustees are to continue the same....(16) After my death my trustees shall, out of the income set up a *Sadavart* at the town of Nasik". No specific amount was set apart for the second *Sadavart*. It was held however that the bequest for this second *Sadavart* at Nasik was valid and not void for uncertainty. The clear intention of the testator was that the second *Sadavart* should be on the same scale as the one at Anjar, and consequently there was no difficulty in ascertaining the nature of the *Sadavart* to be established and the sum to be spent on it. Even where there is no institution of a similar nature already established by the founder, the court can direct an enquiry as to the amount of expenses that is reasonable and proper (e). A Hindu testator by his will directed that his executors should get a Siva's temple erected at a reasonable cost in a suitable place within the compound of the brick-built Baitakhana house, inclusive of the building and garden attached thereto, in which he had constantly resided. Although no specific amount was mentioned as the cost of the temple, the direction was held not to be void for uncertainty, and the direction of the trial court that a sum amounting to 3% of the movable estate of the testator should be spent for the purpose was upheld as reasonable by the High Court (f). In this case there was a further direction in the will that the executors should keep in deposit Government Promissory Notes of Rs. 9,500/- for the preservation and repairs of the Baitakhana house in proper time and for the daily and periodical worship of the said God Siva, for his *sheva* and repairs of the temple. It was held on a construction of the will that there was no effective disposition of the Baitakhana house and consequently it vested in the heir

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(c) Magistrate of Dundee V. Morris—(1858) 3 Macq. 134.
(d) Jamnabai V. Khimji—14 Bom. 1.
(e) Vide Kali Prasanna Mittra V. Gopeenath—7 C.L.R. 241.
(f) Vide Gokool Nath V. Issur— lochan—14 Cal. 223.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

as on intestacy. The testator however had directed that the interest of the G. P. Notes should be spent for the repairs of the Baitakhana as well as the worship of the idol. The question arose, as to how was the amount to be apportioned between the two objects. The lower court adopted the rough and ready method of dividing the sum equally between the two objects and the High Court in appeal did not think the decision to be an improper one. "We think it may fairly be said" thus observed the learned Judges in the judgment "that when a fund is provided for two objects and there is no indication to show how much is intended for each, it may be presumed that in the absence of anything to the contrary, the intention was that they should benefit equally i.e. half the fund was intended for one object and half for the other". It has been held in England that if a fund is given to two objects, one of which fails for some reason or other and the other is charitable, the court will uphold the charitable part by apportioning the fund between the two objects. An enquiry may be made in such cases as to the amount which would be required for the respective objects and if the apportionment was a matter of discretion, equal distribution will be directed (g).

In Re Clarke, Bracey V. Royal National Life Boat Institution (h) there was a trust created by a will by which the residue of the testator's property was to be divided among four objects, three of which were charitable and the fourth was not and was too uncertain. It was held that the residue would be divided into four parts three of which would go to the charities and the fourth to the next of kin. Difficulties however arise, when a gift of charity is residuary upon a void gift. In such cases if the court finds the precedent gift to be of an ascertainable amount, the gift of the surplus to charity would stand valid. But if the amount of the previous gift could not be ascertained the whole thing fails. Sir George Jessel thus stated the law in Re Birkett (i). "If there were no authorities I should hold where there

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(g) Tudor on Charity p. 61. (h) 1923. 2 Ch. 407.
(h) (1923) 2 Ch. 407.
(i) 9 Ch.D. 576.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

is a gift of money upon trust to apply a portion of the income for a definite purpose, and then to apply the surplus for another purpose, that if the first purpose were sufficiently defined to enable you to ascertain the amount of the income that would be required for it, and the purpose failed through the gift being invalid, the gift of the surplus would be unaffected beyond the amount so ascertained..... If the first object is not so defined that you can reasonably ascertain the amount required, the whole must fail because you might then apply the whole of the income properly and fairly to the first object ; there would be of course no ascertainable residue" (j).

When the whole fund is given to charity, subject to a trust in favour of another object which fails, the entire fund would be available for charity (k).

No trust can at all come into existence if there is uncertainty as regards the subject matter ; if on the other hand the object is ambiguous and uncertain, then also the trust fails so far as that object is concerned though there may be a resulting trust in favour of the settlor or his heirs. In Morice V. Bishop of Durham (l) Lord Eldon said : "As it is a maxim that the execution of a trust shall be under the control of the court, it must be of such a nature that it can be under that control ; so that the administration of it can be reviewed by the court ; or if the trustee died, the court itself can execute the trust ; a trust therefore which in case of maladministration could be reformed and a due administration directed ; and then unless the subject and the objects can be ascertained upon principles familiar in other cases, it must be decided that the court can neither reform maladministration nor direct a due administration".

Rules of English law for determining definiteness of the objects of charitable trust.

The rules of construction that are followed by English courts for the purpose of ascertaining whether an object of charitable trust has been indicated with definiteness or not, are somewhat artificial, and they are based upon the technical notions of charity which prevail in the English system. One of the cardinal rules adopted by English Judges is that the word

(j) See also in Re Porter (1925) Ch. 746.
(k) Kelly V. Att. General—1917 Ir. R. 183.
(l) 10 Ves. 522 at 539.

UNIVERSITY OF CALCUTTA
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"Charity" by itself is sufficiently definite, and a gift to charitable purpose *simpliciter* would be perfectly valid, and would not fail for want of definiteness. The reason is that the expression 'charity' has a well-defined meaning in English law, based as it is, upon the preamble to the St. of Elizabeth and the court can direct a scheme to be settled in accordance with the same (m). Trusts for purposes vaguely described as "benevolent" (n), 'philanthropic' (o), 'pious' (p), 'hospitable' (q), 'generally useful' (r) etc. cannot rank as valid charitable trusts. The ground upon which these decisions are based is that the objects of benevolence and liberality might be charitable but are not necessarily so, and the trust may be completely exercised without bestowing any part on purposes strictly charitable (s). The next rule of importance adopted by English courts is that when a trustee is given the option to apply a fund to a charitable purpose or to a purpose not charitable at his discretion, the gift to charity fails. As there are two alternatives, the trustee may apply the fund properly to a non-charitable object and the court cannot wait to see how the discretion is exercised. As there is uncertainty in the provision itself, the gift cannot take effect. One of the leading pronouncements on the subject is that of Lord Halsbury in the Scotch case of Grimond V. Grimond (t) where a testator had directed his trustees to divide a portion of his residuary estate among "such charitable or religious institutions and societies as they might select". By the laws of Scotland religious purposes are not necessarily charitable and as the direction given by the testator was vague and indefinite, it was held that the gift was invalid. "In this case", so runs the judgment "the testator has not made any will himself, he has allowed some one else to make a will for him after his death and that the law will not allow". You should bear in

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(m) Vide in Re MacDuff (1896) 2 Ch. 451 at 469.
(n) Morice V. Bishop of Durbam—9 Ves. 399.
(o) Re MacDuff—(1896) 2 Ch. 451.
(p) Heath V. Chapman—(1854) 2 Drew, 417.
(q) Re Hewitt's Estate—53 L. J. Ch. 132.
(r) Kendall V. Granger—(1842) 5 Beav. 300.
(s) See Morice V. Bishop of Durham—9 Ves. 399 ; See also Halsbury on Charity page 167.
(t) 1905 A. C. 124.

CENTRAL LIBRARY

mind that had the power been given in this case in favour of charitable gifts only, the trust would have been quite good. The whole thing became uncertain by reason of the introduction of the disjunctive word "or". On the same principle trusts for charity or works of public utility (u) "charitable or public purposes" (v), "charitable religious or other objects" (x), "charitable or benevolent purposes" (y) are void. In William V. Kershaw (z) the bequest was for such "benevolent, charitable and religious purposes as the trustees should elect". The Master of Rolls held that the words meant "benevolent or charitable or religious," and consequently the trust was void. If however the different objects of trust instead of being separated by the disjunctive particle 'or' were joined together by the conjunction "and," the gift would become valid. Thus trust for purposes "charitable and pious" (a), "charitable and deserving" (b), "religious and charitable" (c), "charitable and public purposes" (d) have been upheld. The reason is that in such cases the purposes are not alternatively charitable or not charitable as the trustees might elect, but are confined to objects which must at least be charitable, though the charities might be of a particular type, as indicated by the other expressions used. There is another rule of construction followed by English Judges and which is to the effect that even when the two classes of objects cannot be taken conjunctively the trust can be upheld if having regard to the intentions of the donor the whole gift can be construed as charitable, the other words being taken as *ejusdem generis* with those that are charitable. Thus in Re Bennet (e) a trust 'for the benefit of the schools and charitable institutions and poor and other objects of charity or any other public objects in the said parish of Faringdon' was upheld as valid, the words 'public

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(u) Langham V. Peterson (1903) 87 L. T. 744.
(v) Blair V. Duncan—1902 A.C. 37.
(x) Re Davidson (1909) 1 Ch. 567.
(y) Re Jarman—(1878) 8 Ch. D. 584.
(z) 5 L. J. Ch. 84 (1835).
(a) Att. General V. Herick—1772 Amb. 712.
(b) Re Sutton, Stone V. Att. General (1885) 28 Ch.D. 464.
(c) Baker V. Sutton—1 Keen 224.
(d) Blair V. Duncan—1902 A.C. 37 at 44.
(e) (1920) 1 Ch. 305; see also Golan V. MacDermot—1868 L. R. 5 Eq. 60.

CENTRAL LIBRARY

object' being read as *ejusdem generis* with the words preceding the particle "or".

You should remember that the courts in India in giving effect to religious and charitable trusts are not fettered in any way by these technical rules of construction which are adopted by Chancery Courts in England. As a matter of fact however, in actually deciding cases, our courts have not infrequently drawn upon the pronouncements of English Judges on the subject, and the result has been that some amount of artificiality has been introduced into the matter. which cannot be said to be altogether desirable.

It has been held by our courts of law that a gift for a purpose which can be regarded as charitable under English law, or to charity generally would be upheld as a valid gift, even though a wide discretion is given to the trustees in the former case or there is no specification of objects in the latter. A testator by his will directed his executors *inter alia*, to set apart a sum not exceeding Rs. 25,000 for distribution amongst his poor relations, dependants and servants ; the amounts and the persons who would be entitled to the benefit of the provisions being left entirely to the discretion of the executors (f). Harrington, J. held that there was a valid charitable gift for Rs. 25,000/-. "If the present devise" thus observed the learned Judge in his judgment "cannot be supported as a charitable gift, then it will be void for uncertainty. If on the other hand, it can be supported as a charitable gift then the authorities show that it will not be void for uncertainty. In interpreting the words of the devise I am bound, I think, to interpret them if I can, in favour of a valid bequest, rather than in favour of an intestacy. If the word 'poor' is taken as referring not only to the word 'relatives', but to the words 'servants' and 'dependents' which follow, the bequest can be supported as a charitable bequest. Gifts to poor relatives have been supported as charitable gifts, see for example, the case of Attorney General V. Duke of Northumberland (g). and the cases cited in the judgment in that case, and if a gift to poor relatives can be supported, it appears to

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(f) Monorama V. Kalicharan 31 Cal. 166.
(g) (1877) 7 Ch.D. 745.

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ADVANCEMENT OF LEARNING
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me a gift to poor dependants and poor servants can equally well be supported.....I hold that the gift of Rs. 25,000/- is charitable gift.....and it will be given effect to notwithstanding the very wide discretion which the testator has given to the executors."

You will notice that in this case, the executors had the discretion to apply the trust fund to any of the three classes of beneficiaries mentioned in the will, and unless gifts to all these three classes could rank as chariable gifts, the trust would fail altogether, as the choice would then be between a charitable and a non-charitable object. As the courts favour a benignant construction in the case of charitable gifts (h) it was held that the adjective "poor" qualified 'dependents' and 'servants' as well and all the three objects of trust were charitable. This case is also an authority for the proposition that a charitable gift of a sum not exceeding a particular amount is tantamount to a gift of that amount (i). In Gordhan Das V. Chunilal (j) a deed of endowment which was executed by Rai Joti Prasad of Agra, recited that the executant had established a Dharamsala at Benaras for charitable purposes, and carried on charity at a cost of Rs. 500 a month. It was recited then that it was necessary to make a permanent arrangement for the continuance of the charity and for meeting the expenses connected with it, and that therefore the document was executed. In the operative part Joti Prasad purported to set apart the profits of seven villages for the expenses of the Dharamsala and directed that the net profits of these villages to the extent of Rs. 500 a month should be applied to charitable purposes (Pun) at the Dharamsala. It was held that it was a valid charitable gift although the object was not specified. "The dedication in the case before us" so runs the judgment "is for charitable purposes (Pun) and for charitable purposes alone. A trust for such purposes that is for charity generally will always be carried out notwithstanding that the objects of the charity are not specifically described. The court can, if necessary in such a case, settle a scheme for its proper administration". You

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(h) Weir V. Crum Brown—(1908) A.C. 162 at p. 167.
(i) See in this connection Thomson V. Thomson—(1846) 1 Coll. 395.
(j) 30 All. 111.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

will notice that the word "Pun" which was used here and which is derived from the Sanskrit word "Punya" is not synonymous with 'charity' in the English sense but includes all virtuous or meritorious deeds. As the Dharamsala however is a charitable institution and only the expenses of Dharamsala were to be met from the income of these villages, there was no doubt here as to the certainty of the object.

Gift for 'Dharam" whether uncertain.

A gift or bequest for *Dharam* without specifying the object has been held to be void for uncertainty in a long series of cases, mostly of the Bombay High Court. The earliest pronouncement on the point is that of Sir Erskine Perry and S. M. Yardley in the case of Advocate-General V. Damothar (k) which was followed in Pranjivan Das-V. Deo Kuvarbai (l). The question was elaborately considered by Farran, C. J. and Tyabji, J. in Vundraban Das V. Curson Das (m). In this case the testator after giving certain properties to his two wives left the residue to his trustees who were to apply the same for "dharam". It was held that the trust was void for uncertainty. Farran, C. J. in course of his judgment after pointing out that the matter was concluded by a long series of authorities observed as follows :—"It is doubtless the case that this interpretation of the law defeats, in innumerable instances, the cherished wishes of Hindu testators. Few Hindu wills, that we have met with, are without a devise of this nature, though some testators define with precision the objects of their *dharam*, and it may well be that the court would have acted with more regard to native feeling and ideas if, instead of considering the broad signification that the word *dharam* indisputably bears, which appears to be as wide as the words philanthropy, or piety, or charity, in its untechnical sense, they had considered the objects which the Hindu Shastris and Hindu testators would consider to be embraced within the term and construed it in reference to the Hindu sacred law relating to *dharam*. These objects, we think, might be exhaustively enumerated under a few heads which would even now, with advancing ideas,

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(k) Perry's Oriental cases 526.
(l) 1 B.H.C.R. 76 (Note).
(m) 21 Bom. 646.

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not be wider than the objects which are deemed to be charitable by courts in England....In a native Court untrammelled by English precedent or decisions we can hardly doubt but that a devise in *dharam* would be upheld and applied. The question is, however, we consider, not open to us. We have only made these remarks as indicative of what our judgment might have been, we do not say would have been, had the case not been concluded by authority." Thus the learned Judges were clearly of opinion that it was not impossible to define *Dharam* with as much precision, as 'charity' is defined in English law and but for the artificial rules of interpretation which were borrowed from English Courts and applied in some of the earlier cases in the province, the decision might have been otherwise. This case went up in appeal to the Judicial Committee and the Privy Council affirmed the judgment of the Bombay High Court and pronounced the gift to be invalid (n). Reference was made in the judgment of the Judicial Committee to the meaning of the word "dharam" as given in Wilson's Dictionary, where it was defined to mean 'law, virtue, legal or moral duty' and it was held that these objects were too vague and uncertain for the administration of them to be under any control. With all respect to the Judicial Committee of the Privy Council, it may be pointed out, that the dictionary meaning of the word "charity" is equally wide and indefinite, but what the English Judges proceed upon, is not the dictionary meaning of the word but the technical meaning that it has come to acquire on the basis of the Statute of Elizabeth. As Farran, C. J. rightly pointed out, it is not impossible to lay down with definiteness what *dharam* means and includes according to the Hindu scriptures, and the list of objects included in it would not certainly be more extensive than the list of charities under English law. The High Court of Bombay felt itself constrained to follow the existing decisions on the point, which uniformly held such gifts to be invalid, but no such consideration could certainly stand in the way of the Judicial Committee of the Privy Council.

(n) Runchordas Vandravandas V. Parbati Bai—26 I.A. 71.

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In Parthasarathy Pillai V. Thiruvengada (o), a Hindu testator by his will left his properties to his daughter with a direction, that in case she died issueless before attaining majority, the executors were to utilise the property for *Dharmam*. The daughter died without any issue while she was still an infant and a suit was thereupon brought by the next heir of the testator for declaring the bequest to Dharmam to be void, and for establishment of his title to the property as the heir of the testator. Mr. Justice Boddam held that the bequest to Dharmam was invalid and decreed the plaintiff's suit. The matter then came up on appeal before Sir Arnold White, C. J. and Subrammania Ayyar, J. The learned Judges differed in their views and while Arnold White, C. J. agreed with the trial Judge in holding the gift to be invalid, Ayyar, J. held otherwise. In the result the appeal was dismissed, presumably under section 575 of the old C. P. Code, which corresponds to section 98 of the present Code. Mr. Justice Subrammania Ayyar, in course of his erudite judgment pointed out with reference to original authorities, that the word "Dharma" when used in connection with gifts of property by a Hindu has a perfectly well-settled meaning and connotes *Istha* and *Purtta* donations. It is a term of art explained with precision by the highest authorities on Hindu Sastras and referred only to certain classes of pious gifts. Obviously those authorities were not brought to the notice of the Bombay High Court, when the matter first came up before them for consideration, and a mistake once committed was perpetuated on the principle of *Stare decisis*. That the view of Subrammannia Ayyar, J. is the correct one seems to be the opinion of many eminent Hindu Judges who had occasion to consider this matter (p), but because the Privy Council was not prepared to reconsider its views the decision in Ranchordas V. Parbati (q) was held to be binding on Indian courts. Now that we are not tramelled, by the authority of the Privy Council, the time has come for

The expression 'Dharma' when used with reference to gift of property connotes *Istha* and *Purtta* works according to Hindu sages.

(o) 30 Mad. 340.
(p) Vide the observation of Mookerjee, J. in Bhupati V. Ramlal—37 Cal. 128 (F.B.) and of Jailal, J. in Brijlal V. Naraindas—14 Lahore 827.
(q) 26 I.A. 71.

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a reconsideration of the whole law on this point. A gift for *dharmada* (r) or for *dharmaartha* (s) have been pronounced to be invalid. In a Bombay case, the testator directed his executor to set apart one-third of his property after payment of debts and apply the same towards his death ceremony and for '*dharma khairat*' (t) it was held that the word 'khairat' which literally means "alms or charity" was itself indefinite and even if it was taken to be definite, its meaning was obscured by the word *dharma*, whether the latter expression was taken disjunctively or conjunctively. The result was that the bequest was held to be void for uncertainty. Where however an existing charity is indicated by the word *Dharma*, the gift is valid (u). A Hindu testator by his will appointed three executors and after making certain bequests directed as follows :—"After all the matters shall have been settled, whatever property of mine may remain, that remaining property shall be disposed of in a righteous manner, in a pious and charitable way as may appear advisable to all my three executors. It shall be disposed of in such manner that people may speak well of me and all my three heirs may acquire fame." It was held that there being no valid declaration of trust the remainder vested in the legal heir, but the suit of the plaintiff who claimed to be assignee from one of the heirs was dismissed on the ground of limitation (v). A gift of money or property to a person with direction that the donee would do virtuous acts out of the property (w) or spend it in good works (x), would not create a trust and the direction being void for uncertainty the donee would enjoy the property or fund as if there was no such direction. A bequest of surplus income for 'proper and just acts' for the testator's benefit is void for uncertainty (y), and so is a provision that on the death of the testa-

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(r) Dev Shankar V. Motiram—18 Bom. 136.
(s) Brijlal V. Naraindas—14 Lah. 827.
(t) Marianbai V. Fatimabai—31 Bom. L.R. 135.
(u) Vaidya Nath Ayyar V. Swami Nath Ayyar—51 I.A. 282.
(v) Nanalal V. Harlochand—14 Bom. 476.
(w) Collector of Moorshidavad V. Ranee Shebessuree—18 W.R. 226 (P.C.).
(x) Bai Bapi V. Jamnadas—22 Bom. 774.
(y) Gokool Nath V. Issur—14 Cal. 222.

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tor's mother and wife the property would vest in the fellow villagers for performance of pious acts (z).

Rule of construction when the trustee is given the choice between two alternatives, one of which fails as a gift for charity.

Following the English precedents our courts of law have held that when a trustee is given the discretion to choose between two or more alternative objects, one of which is uncertain or indefinite the entire gift fails, even though one or more of the other alternatives be definite, religious or charitable objects. Thus a direction by a testator to the executors that they would make use of the surplus in such manner as they may unanimously think proper for purposes of popular usefulness or for purposes of charity is a void direction (a). Purposes of popular usefulness are distinct from purposes of charity and they were connected here by the disjunctive particle 'or'. As purposes of popular usefulness are not necessarily charitable they must be held to be vague and indefinite and the entire trusts failed. In Bai Chandun Bai V. Dady Nusserwanji (b) a Hindu testator directed that after the death of his wife and in default of or in failure of issues, his trustees should bestow certain trust premises and the interest, dividend and income thereof "upon someone, or more charitable, educational or other philanthropic institutions calculated to promote public good, as they shall in their discretion select". It was held by Starling J. on the authority of the English decision in Williams V. Kershaw (5 Cl. & F. 111N) that the words 'charitable, educational or other philanthropic' should be read as 'charitable educational or other philanthropic' and the gift to charity was void for uncertainty. The same rule of construction was followed by Chowdhury, J. in Sarat Chandra V. Pratap Chandra (c). There a settlor executed a trust deed, and after making various gifts for special religious purposes made the following provision in the sixth clause : "Out of the income which shall remain after incurring all the aforesaid expenses, a sum not exceeding one thousand rupees shall be applied to supporting the poor, the blind and the destitute, and in imparting education, in *upanayan*, in removing marriage difficulties or in

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(z) Kandarpa V. Jogendra—12 Cal. L. J. 391.
(a) Trikam Das V. Hari Das—31 Bom. 583.
(b) 26 Bom. 632.
(c) 40 Cal. 232.

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works of public good ; that is, it shall be paid at the discretion of the trustees, towards dispensaries, hospitals, charitable societies, schools, or any students' education, feeding of poor etc., marriage, upanayan etc., excavation and consecration of tanks in villages, having dearth of water etc." It was held that the directions contained in this clause were void and inoperative for vagueness and uncertainty. With all respect to the learned Judge it may be pointed out that almost all the items of charity were specifically mentioned in the clause referred to above, and even if there was any ambiguity by reason of the words 'or in works of public good' these words could have been construed *ejusdem generis* with the words that preceded them. Obviously the works of public good contemplated by the settlor were fully explained in the passages that followed.

In Sri Gadicherila V. Nayyapatti (d) a Hindu executed a will by which he purported to create a charitable and religious trust by providing that a sum of Rs. 400/- should be spent every year out of his estate "either for the spread of Sanskrit language or for the spread of Hindu religion or for both"; the amount was charged on the estate and certain persons were appointed executors who were to arrange for conducting the trust, as the trustees from time to time, of an institution called the Hindu Samaj at Rajmundry might deem fit. The executors declined office. The adopted son of the testator who got the estate refused to pay the money in accordance with the directions in the will. Thereupon a suit was brought by the trustees of the Hindu Samaj at Rajmundry under section 92 Civil Procedure Code for relief under that section. The trial court decreed the suit. An appeal was taken against this decision to the High Court of Madras, which came up for hearing before Spencer and Devodoss, JJ. Spencer, J. was of opinion that the trust regarding the spread of Sanskrit language was not void for uncertainty, but the trust as regards spread of Hindu religion was too vague and indefinite to be enforced ; and as under the will the trustee had an absolute discretion to spend the entire sum of Rs. 400/- either for one object or

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(d) 46 Mad. 300.

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the other, the whole gift was void and unenforceable. Devodoss, J. on the other hand went further, and held that even as to the spread of Sanskrit education, the trust was vague and indefinite. The view of Devodoss, J. is clearly unacceptable as would appear from several decisions of English Judges to which reference was made by Spencer, J. in his judgment. We are not sure that in this case the spread of Hindu religion even can be said to be indefinite. It is true that Hindu religion has various branches and sects and the testator did not make it clear which form of Hindu religion he wanted to encourage. But charity even has different forms and aspects in English law, and a trust does not fail even if the particular form of charity is not specified. Moreover in this case, the trust was to be carried out in accordance with the directions given by the trustee of the Rajmundry institution, with which the testator was associated during his life time. It was not difficult therefore to frame a scheme in consultation with the Rajmundry institution which should have completely fulfilled the intentions of the testator. In the case of Brijlal V. Narain Das (e) a testator directed his executors "to apply after his death in such a manner, as they consider proper, the money and property bequeathed to them for *dharmartha*, the dharamsala and Sanskrit education." Here the three objects of the trust were really in the alternative and they were to be read disjunctively so that the trustees had the discretionary power to apply the funds to any one of the three objects to the exclusion of the other two. It was held that one of the three objects viz. *dharmartha* was invalid for uncertainty, and although the other two were certain, the whole gift failed by reason of the co-relation of the invalid objects. That our courts of law have in some instances taken an extreme and unreasonable view on the question of certainty of the objects of trust is illustrated by the decision of White, J. in a Calcutta case (f). In this case a Hindu testator directed his

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(e) 14 Lah. 827.
(f) Sarbamongola V. Mahendra—4 Cal. 508.

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executor to lay out and expend such portion of his property as the latter may, in his discretion, think necessary and proper, in and towards the construction and erection of pucca bathing ghat at a suitable place in the river Hooghly to be surmounted by a chandni and two temples for Siva, for whose daily worship a monthly allowance will be made by the said executor, the amount whereof shall be at his discretion. White, J. pronounced the trust to be invalid for want of definiteness. It is difficult to say in which respect, definiteness was lacking in this case. The direction was that a pucca bathing ghat should be erected surrounded by a chandney and two temples of Siva. As regards the site the executor could choose any place on the river Hooghly. The utmost that could be said is that the amount of money that was to be spent for this purpose was not specified. But in such a case the court could certainly direct that the construction should be made at a reasonable cost as was done in Gokool Nath V. Issurlochan (g).

I have told you that according to the decisions of English courts, where the two objects of trust are not separates by any disjunctive particle, but the gift is to charity and some other object conjointly, it would be upheld as valid. In a Calcutta case the testator bequeathed the residue of his estate to be spent and given away in charity in such manner and to such religious and charitable purpose as the executor would think proper (h). This was held to be a valid trust. The learned Judges relied upon an old decision which was quoted in Advocate-General V. Damothar (i). But quite apart from that authority the decision could be very well supported on the ground that the intention of the testator was that the object to which the money should be applied, must be charitable even though it might be religious at the same time.

Questions of uncertainty of the object often arise in connection with endowment created in favour of deities who are not specified by name. This matter

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(g) 14 Cal. 222.
(h) Parbati Bibee V. Ram Barun—31 Cal. 895.
(i) 1 Bom. H.C.R. 76 (Note).

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will be considered in a future lecture where I will deal with Debutter Trusts.

'Charity' a favourite of English Chancery Courts. Doctrine of "Cypres".

Charities, as I have said, were highly favoured by English Equity courts. This may have been due to the influence of civil law or the bias in favour of charitable gifts of the Ecclesiastical Courts which formerly had jurisdiction over wills and intestacies. Charitable dispositions have always received a more liberal construction than the law will allow in gifts to individuals (j). One result of such liberal construction has been the introduction of the rule of 'cypres' in the matter of giving effect to an administration of charitable trusts. 'Cypres' means "following as nearly as possible the intention of the donor." When the particular mode of charity indicated by the donor is not capable of being carried into effect, yet, if the donor had expressed a general intention of charity the court would not allow the trust to fail, but would execute it "cypres" i.e. to say in some way as nearly as possible to that which the testator specified. The foundation of this doctrine was thus indicated by Lord Eldon in two of his classic pronouncements on the subject ; "Although in carrying to execution a bequest to an individual, the mode in which the legacy is to take effect must be of the substance of the legacy, yet where the testator has sufficiently indicated that charity is his legatee, the court will consider charity as the whole substance of the legacy, and in such cases only will provide a mode by which that legatee shall take" (k). Again "If the testator has manifested a general intention to give to charity, the failure of the particular mode in which the charity is to be effected will not destroy the charity ; but if the general intention is charity the law will substitute another mode of devoting the property to charitable purposes though the formal intention as to the mode cannot be accomplished" (l).

There are numerous decisions of English courts on the application of Cypres rule in the administration of charitable trust. I do not propose to discuss the cases in detail. I will only draw your attention

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(j) Story's Equity Jurisprudence, Art. 1165.
(k) Mills V. Farmer—1 Mer. 55 at 100.
(l) Moggridge V. Thackwell—7 Ves. 36 and 13 Ves. 416.

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to the salient principles that can be gathered from them.

Cypres doctrine not applicable when there is no general intention of charity.

The first essential condition to attract the application of the *Cypres* doctrine is that the donor must evidence a general intention of charity. The whole rule is founded on the presumption that although the gift might be to a particular charity, the intention was to give to charity generally, and consequently when the particular disposition cannot be carried into effect, the court, in order that the general charitable intention may not be disappointed, makes a *cypres* application of the fund and applies it to a purpose, which coincides as nearly as possible with the object that has failed. Where there is no such general intention of charity, the cypres doctrine can have no application (m). No application of the doctrine is also possible where a contrary intention is expressed or is to be implied from the language used by the testator, as for example, where there is direction that on failure of a charitable bequest the property will fall in the residue (n). Provided that there is a general charitable intention, to make the cypres doctrine applicable, there must be a failure of the particular object specified by the testator, or there must be a surplus left after satisfying the particular purpose. Where the donor's directions can be given effect to, the court has no authority to sanction any deviation from them on grounds of expdiency. The court cannot apply the charity in a manner which it considers to be more beneficial to the public, or which it thinks the donor himself would have contemplated had he foreseen the changes that have taken place by lapse of time (o). When there is a possibility that the indicated object may be given effect to, though at a future time, the court may refuse to apply the rule of *cypres* and can direct the fund to be kept in court till the objects become possible (p). There may be failure of the purpose named by the testator at its very inception, or the object might fail by reason of subsequent circumstances. Examples of

When there is a general charitable intention, the doctrine applies when there is a failure of the particular object.

Specified by the settlor of a surplus left after satisfying the particular purpose.

(m) Vide in Re Wilson (1913) 1 Ch. 314.
(n) Corlyn V. French—4 Ves. 418 ; See Halsbury 2nd. Edn. Vol. 4 p. 22.
(o) Halsbury 2nd Edn. Vol. 4 p. 228.
(p) Att. General V. Bishop of Chester—1 Bro. C.C. 444.

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of the former are gifts in favour of non-existent institutions, or institutions which are not capable of being identified or had ceased to exist before the death of the testator, or are incapable of taking any gift under law (q). This also includes cases where the objects sepcified contravene the provisions of any law (r), as when an accumulation is directed beyond the limits prescribed by the law (s). But if the intention itself is contrary to public policy *Cypres* doctrine cannot be applied as the gift cannot be regarded as a charitable gift at all (t).

The cases where the charitable purpose takes effect in the first instance but subsequently fails come under the second category, and here also the *cypres* doctrine would be applied provided there is a general charitable intention. A trust was created for the relief of prisoners for debts, but this form of punishment was subsequently abolished and the court applied the fund for the relief of other prisoners (u). A trust for the redemption of British slaves in Barbary was applied *cypres* when slavery was abolished in that country (v). The same principle was applied where there was a gift to support pupils at a upblic school, and the school subsequently ceased to exist (w). When the object of a charitable trust does not exhaust the entire fund, the court can always direct that the surplus fund be applied in furtherance of the original intention of the donor. If originally the income of the fund was sufficient for the particular purpose, but in course of time there was an augmentation of the income, the court assumes that the subsequent income was also intended for charity (x). If the original income was in excess of the requirements of the trust, *cypres* doctrine is applied if there is a general intention of charity and not otherwise (y). The same principle is applied where there is a surplus due to the decay of the specific charity mentioned by

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(q) Vide Tudor on Charities p. 150—152 (5th Edition).
(r) A. G. V. Vint.—3 De. G. and Sm.—704.
(s) Martin V. Margham—14 Sim. 230.
(t) Tudor on Charities p. 153 (5th Edition).
(u) A.G. V. Hankey—16 Eq. 140 (Note).
(v) Ironmongers Co. V. A. G. 10 Cl. and F. 908.
(w) Re Templemoyle School—I. Ir. R. 4 Eq. 295.
(x) A.G. V. Coopers' Co.—19 Ves. 187.
(y) Halsbury, Vol. V, p. 226.

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the donor (z). In Re Campden Charities (a) a sum of money was given by a testatrix in 1643 to be laid out in the purchase of lands of the annual value of £10, one half to be applied towards the better relief of the most poor and needy people of good life and conversation in the Parish of Kensington, and the other half towards apprenticing one poor boy or more of the Parish. At the time of the grant Kensington was a little village, but it enormously increased in size and importance and the income of the charity estate amounted to about £2,200 a year. The Charity Commissioners settled a scheme under which a large portion of the income was diverted for educational purposes. Hall V. C. disagreed with the Charity Commissioners and set aside the scheme. On appeal Jessel M. R. reversed the decision of Hall V. C., and accepted the scheme. It was pointed out by the learned Master of Rolls that not only the income of the property had greatly increased but the habits of society had considerably changed, and there were changes in legislation also. Apprenticing was no longer compulsory under the laws of England as it was at the time of the grant, and boys could be taught useful trades in much shorter time without being apprenticed at all. It could not be held in such circumstances that to apply half of the money amounting to £1100 a year towards apprenticing of poor boys would be in consonance with the intentions of the grantor, and nobody could guess as to what the testatrix herself would have intended had she anticipated this huge increase in the income. It was not longer possible beneficially to apply the property in the exact way in which it was directed to be applied and in such circumstances it was held to be a better method of effectuating the founder's intentions, if the income instead of being spent on doles and apprenticing fees was spent on education.

Objects chosen should be akin to the object that failed.

In every case where Cypres doctrine applies, the court should choose such objects as are akin to the object that had failed. When the same instrument provides for charity of different kinds, the failure of one

(z) Ibid.
(a) 18 Ch.D. 310.

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ADVANCEMENT OF LEARNING
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of the objects does not necessarily justify the application of that fund to the other objects mentioned by the donor (b). Where a fund is given conditionally to charity and the condition is not fulfilled there is no complete dedication to charity at all and no question of the application of Cypres principle arises (c). A testator by his will gave a sum of £25.000 to the Institute of Medical Sciences Fund, University of London, which was in process of formation. The money was actually paid over to the trustees of the fund, but the scheme was subsequently abandoned and the money was returned to the executors. A question arose whether the money could be applied Cypres. The question was answered in the negative, inasmuch as the sum was not finally dedicated to charity but was a contingent gift and the contingency was not fulfilled (d).

Cypres doctrine not displaced even if the residuary bequest is to charity.

Almost all these principles of English law have been adopted by our courts in India. One of the earliest pronouncements on the subject is that of the judicial Committee in Mayor of Lyons V. The A. G. of Bengal (e). This case arose out of the will of General Claude Martin who was a Major General in the service of the East India Co. and a native of Lyons in France. With the sanction of the British Government he afterwards took service under the ruler of Oudh and resided at Lucknow where he died in 1800. He left behind him a will by which he bequeathed his properties valued at over 30 lakhs of rupees partly to individual legatees but mainly to charities. The will contained among others the following dispositions :—

A gift of Rs. 5000/- per annum for the release of prisoners for debts in Calcutta, and a gift of Rs. 1000/- per annum for the relief of such prisoners ; a similar gift of Rs. 4000/- per annum for the liberation of poor prisoners in Lyons ; a like sum of Rs. 4000/- per annum to liberate prisoners for debts in Lucknow ; three bequests to found charities in Calcutta, at Lyons and at Lucknow respectively, and a gift of the residue equally between the said three charities. With reference to the gift in favour of the Lucknow

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(b) The Ironmongers' Co. V. A.G.—10 Cl. & F. 908.
(c) Vide Chamberlayne V. Brochett—L. R. 8 Ch. 206.
(d) Re University of London Med. Sciences Inst. Fund—1909 2 Ch. p. 1.
(e) 1 Cal. 303 P. C.

CENTRAL LIBRARY

prisoners the will directed that if it should fail the fund should remain to the estate. No similar direction was given in respect of the gift in behalf of the Calcutta or Lyons prisoners. The question arose with regard to the trust for the release and relief of prisoners in Calcutta. On August 3, 1865, the Advocate-General of Bengal presented a petition to the Calcutta High Court in which it was stated that the bequest to prisoners in Calcutta had become obsolete, by reason of change in the law relating to imprisonment for debts and that a fund of Rs. 3,50,000 had accumulated, and a scheme was proposed for application of the accumulated funds. The scheme was adopted by the Court ; thereupon the Mayor of Lyons put forward objections to the acceptance of the scheme and contended *inter alia* that the bequest having failed, the money fell into the residuary estate. These objections were overruled, and the scheme was affirmed. The Mayor of Lyons thereupon took an appeal, against this decision, to the Privy Council. On behalf of appellant it was contended *inter alia* before the Judicial Committee that the *Cypres* doctrine could not possibly apply when the residue of the testator's estate was given to charity, and that at any event the fund that was allotted to the object that failed should be applied to the other charitable objects specified by the testator in his will and which were capable of taking effect. Their Lordships held that it could not be laid down as a general proposition of law that the *Cypres* doctrine is displaced where the residuary bequest is to charity, or that there is anything analogous to the benefit of survivorship, since cases may easily be supposed where the charitable object of the residuary clause is so limited in its scope or requires so small an amount to satisfy it, that it would be absurd to allow a large fund bequeathed to a particular charity to fall into it. As soon as a specific charitable bequest fails, the court gets jurisdiction to act on the *Cypres* principle, no matter whether the residue is given to charity or not, unless upon a construction of the will a direction can be implied that the bequest, if it fails, should go to the residue. It was further held that in applying the *Cypres* doctrine, search should be made for objects akin to that which has failed, though the court may

CENTRAL LIBRARY

have regard to the other objects of the testator's bounty as mentioned in the will.

In an early Calcutta case (f) a testator directed his executors to set apart a sum of Rs. 7,000/- to provide a fund for or towards the education of two or more boys at St. Paul's School, Calcutta, such boys to be natives of Calcutta, of poor and indigent parents or fatherless children of Armenian or other Christian religion. The testator died in 1867. Three years before his death, the St. Paul's School at Calcutta, was removed to Darjeeling. The Darjeeling School was a boarding school and the cost of each pupil was much higher than that of the day scholar in Calcutta. The plaintiff who was a son of the testator alleged that by reason of the closing of the St. Paul's School at Calcutta, the trust failed and the money became part of the residuary estate. Pigot. J. overruled this contention. It was held that the gift was not really to the school, but there was a trust created for the education of boys of a particular description, and there being a general charitable intention, the *Cypres* doctrine applied and a reference was made to the Registrar to report on the question in what manner the wishes of the testator could be best carried out. This order was affirmed on appeal (g) and Wilson, J. in course of his judgment pointed out that as the gift was not to the St. Paul's School, the question whether the institution at Darjeeling was a continuation of the Calcutta School was not required to be decided in the case.

In the case of Advocate-General of Bengal V. Belchambers (h) a testator directed his executors *inter alia* to set apart a sum of Rs. 16,000/- for a charitable dispensary and a sum of Rs. 50,000/- for its upkeep and the dispensary was to be erected on a part of the garden house of the testator at Ramkrishtopore. The executors were all dead and the garden house at Ramkrishtopore had ceased to be the property of the deceased. Fletcher, J. held that these circumstances did not affect the charitable trust and as there was a general charitable intention the trust was to be executed *Cypres*.

(f) Malchus V. Broughton—11 Cal. 591.
(g) Vide 13 Cal. 193.
(h) 36 Cal. 261.

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The application of the *Cypres* principle to the surplus income of a trust fund is illustrated by the decision of the Calcutta High Court in Advocate-General of Bengal V. Cap. S. Webb Johnson (i). This related to a trust known as Silver Wedding Trust Fund, which was started on the occasion of the anniversary of the Silver Wedding of the King Emperor and the Queen Empress of India in 1918. Under the direction of the Queen Empress the fund was held by the treasurer for charitable endowments and the income was applied for the higher education of the children of Indian soldiers who had fallen or become permanently disabled during the 'last Great War.' For some years past, the entire income could not be spent on those objects, it having been found impracticable to do so, and the result was an accumulation of a considerable sum of money as surplus income. In these circumstances with the consent of Her Majesty, the court applied the *Cypres* principle and extended the scope of the trust by including under it the education and assistance of children and dependants of the Indian officers and soldiers who rendered military service under the Crown during that Great War or who had taken part or may hereafter take part in subsequent warlike operations.

The decision of Mr. Justice Davar in Advocate General of Bombay V. Fardoonji Ardeshir (j) is a leading Indian authority on the point that in case of charitable bequests the court has no right to set aside the wishes of the testator and substitute another charity in place of the one directed to be established by him simply because it might not be so useful as some other that the court might substitute. In this case a testator had made a bequest of Rs. 7,500/- for distribution of trandus (brass pots) to the members of his caste and *saraswat* Brahmans in Bombay and there was another bequest for distribution of copper pots and sugar candy to members of his caste in 1440 villages in Cutch. The Advocate General, at the instance of the plaintiff, moved the court to have it declared that it was not practicable to carry out the

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(i) 29 Cal. W.N. 793.
(j) 13 Bom. L.R. 332.

CENTRAL LIBRARY

bequest and asked the court to apply them *Cypres* to some other and more useful charities. Davar, J. negatived this contention and held that the trusts were valid public trusts and were capable of being carried out.

It is not necessary, however, to attract the *cypres* doctrine that it should be physically impossible to carry out the original object of the donor under all conceivable circumstances. It is enough, if it is impracticable or has become valueless owing to altered circumstances and the object cannot be carried out in the manner and form intended by the donor (k).

The Indian courts have held in consonance with English doctrines that when the charitable gift is not absolute but conditional and is contingent on the fulfilment of certain conditions which are not fulfilled, no charitable trust is at all brought into existence and no question of application of the *Cypres* doctrine arises. The case of Santana Roy V. The Advocate General of Bengal (l) may be referred to in this connection. In this case the settlor intended that his debts should be discharged out of the income and after they had been liquidated in that manner, the charitable trust would come into operation, the expenditure in that behalf to be incurred from the income of the estate ; the trust being further subject to two conditions viz. (1) that the charities were to be carried on within the zemindaries of the settlor and (2) that the charities were to be selected by the trustees and approved of by the settlor himself. The events that happened rendered impossible the fulfilment of each and every one of these conditions ; the zemindaries being all sold by the trustees with the concurrence of the settlor, and the debts not being satisfied out of the rents and profits of the zemindary as desired by the settlor. It was held that as there was no absolute declaration of intention to give to charity and the gift was dependent upon a condition precedent which was not fulfilled, the gift failed and the *cypres* doctrine was not applicable. Ashutosh Mookerjee, J. in course of his judgment further expressed his opinion that it was extremely doubtful

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(k) Vide In the matter of Hormusji Framji Warden, 32 Bom. 214.
(l) 32 C. L. J. 453; 25 C. W. N. 343.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

whether the doctrine of *cypres* was at all applicable to charitable gifts by deeds *inter vivos*. "There is weighty authority" thus observes the learned Judge "for the proposition that the doctrine of *Cypres* is applied only in wills and not in deeds. In Brudenell V. Elwes (m) Lord Kenyon, C. J. who as Master of Rolls had carried the doctrine of *Cypres* to its farthest limits in Pitt V. Jackson (n) observed as follows : "The doctrine of *cypres* goes to the utmost verge of the law, even in the construction of wills ; and we must take care that it does not run wild. But it has never been applied to the construction of deeds. The cases cited were questions upon wills'. In the same case, when before Lord Eldon, Brudenell V. Elwes (o) the Lord Chancellor said : 'This case does not come near Pitt V. Jackson (p) and the other cases upon wills : first, as they are cases upon wills, not deeds, to which this doctrine has not been applied ; secondly, those cases are at least gone, as Lord Kenyon observes, to the utmost verge of the law'. The same view had been adopted by Lord Mansfield, by implication at least, in the case of Adams V. Adams (q)..... In a case before Sir Edward Sugden, then Lord Chancellor of Ireland (r), it was conceded that the doctrine of *Cypres* could not apply to deeds, and in his Treatise on Powers he adopted the view that the doctrine of *cypres* is confined to wills, and does not extend to limitations by deed only, of either real or personal estate....Lewis in his Treatise on Perpetuity enunciates the same principle". This decision was approved of and followed by the Oudh Chief Court in Audesh Singh V. Commissioner of Lucknow and others (s). In that case in response to an appeal for funds for starting a college of Khattriya community, certain amount was subscribed on behalf of the plaintiff by the Court of Wards under whose management the estate of the plaintiff was. The founding of the college became impossible by reason of the passing

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(m) (1801) 1 East 442.
(n) (1786) 2 Brown C.C. 51.
(o) 7 Ves. 382.
(p) (1786) 2 Brown C.C. 51.
(q) 2 Cowper 651.
(r) Stackpoole V. Stackpoole—4 Dr. & Wa. 320.
(s) A.I.R. 1934 Oudh 329.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

of the Lucknow University Act 1920, and the defendants who were the promoters of the college wanted to utilize the collected funds for general educational advancement of the community. The plaintiff instituted a suit for obtaining refund of the money on the ground that the specific purpose for which it was given had failed. The suit was dismissed by the Subordinate Judge, but on appeal the Chief Court reversed the decision of the trial Judge and decreed the suit. It was held that the gift was for a particular institution conditional upon its coming into existence, and not one for the general uplift of the Khattriya community. As there was no expression of general charitable intention on the part of the donor and the establishment of the college was a condition attached to the gift, the *cypres* doctrine had no application. The learned Judges further expressed their opinion in favour of the view taken in Santona Roy V. Advocate General of Bengal (t) that the doctrine of Cypres is applicable only in wills and not in deeds. In an Allahabad case (u) a gift was made of certain land to the Secretary of the Hindu Dharam Sewak Mandal for the express purpose of being used as the site of an Ashram to be built for imparting training to young Hindu religious reformers. For several years the Mandal did nothing in the way of building the Ashram, and ultimately the Mandal ceased to exist having absorbed by the Hindu Mahasabha. After the death of the donor his son and heir sued to recover the land. It was held that as the land was given for a specific purpose and for a specific purpose only, it was a conditional gift and it became a nullity as soon as the performance of the condition was rendered impossible. There was no general charitable intention expressed by the donor, and the trust could not be executed *Cypres* by allowing the Hindu Mahasabha to build an Ashram on the land.

The Trust must not infringe the provisions of any law.

There remains for us now to discuss the last essential element of a valid religious or charitable trust, and which is, that the trust must not infringe the provisions of any law which would either make it

(t) 32 Cal. L.J. 453 ; 48 Cal. 1.
(u) Harish Chandra V. Hindu Dharam Sewak Mandal—58 All. 687.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

void *ab initio*, or voidable at the option of any aggrieved party. In the case of an ordinary trust the questions that generally come up for consideration under this head are, whether the settlor has attempted to tie up property beyond the limits prescribed by the law against perpetuities, or has directed accumulation of income exceeding the period allowed by law. A trust can also be avoided if it contravenes certain provisions of the Bankruptcy Laws, or if the intention of the settlor was to defeat or delay creditors. We will discuss this matter under the several heads, and see how far these principles apply to religious and charitable trusts.

Charitable Trusts and rule against perpetuities.

We will first turn to the rule against perpetuities. It is deemed to be against public policy, that property should be tied up for an indefinite period of time and rendered incapable of being freely dealt with. The powers of a proprietor to deal with his property in this way are curtailed by the law against perpetuities. Under English law, the doctrine of perpetuity means that "every future limitation (whether by way of executory devise or trust) of real or personal property, the vesting of which is postponed beyond lives in being and twenty one years afterwards (including a further period of gestation where it exists) is void" (v). In deciding whether the limitation offends the rule of perpetuities or not, only possible events are to be looked at, and if the trust may in any event be too remote, it would be void notwithstanding that in the event which actually happened the law is not transgressed. It would be apparent to you that charitable trusts are in a large number of cases intended to exist for ever, or at least for an indefinite period of time, and if the period is to be curtailed by the application of the perpetuity rule, the pious intentions of the donor would undoubtedly be frustrated. The object of the perpetuity rule is to prevent the mischief of making property inalienable, but when the disposition is in favour of purposes beneficial to the public, an exception is made to the application of the rule on grounds of public policy. In English law, therefore, it is well settled that valid and proper

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(v) Vide Cadell V. Palmer—1 Cl. & F. 372 (1833).

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
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charitable trusts are exempted from the rule against perpetuities and such trusts may be made to endure for any period of time that the settlor desires (w). Of course one cannot evade the rule against perpetuities by making charity a trustee ; and if the charity is not to get any benefit from the property but is merely to hold it is as trustee for the performance of a condition in favour of non-charitable objects, such condition will be void (x). Although charities are not subject to the perpetuity rule, they cannot be made to commence at some remote future which transgresses the law of perpetuities. If a charitable gift is made subject to a condition precedent which will not be necessarily satisfied within the period of perpetuity rule, the gift cannot take effect (y). Thus if a gift is made to a non-charitable object and then over to charity, on the happening of a contingency which may not happen within the prescribed period, the gift to charity would be void (z). Similarly a gift over from charity to a non-charitable object is void unless it must vest within the permitted period (a). If, however, the change is from charity to charity the case would not come within the mischief of the rule. The leading authority for this proposition is the case of Christ's Hospital V. Grainger (b) where a legacy was bequeathed to the Corporation of Reading for certain charitable purposes, with a direction that if the donees failed for a year to comply with the provisions of the will, it would go over to the Corporation of London for the benefit of the Christ's Hospital. It was held that the gift over was not affected by the rule against perpetuities.

Law of perpetuity under Hindu law.

Now the original texts of Hindu law givers are altogether silent on the subject of perpetuities, and the early decisions of the Indian High Courts and of the Judicial Committee were definitely against applying the English law of perpetuity to bequests made by Hindu testators. In Juggatsundary V. Manick-

(w) See White V. White—7 Ves. 423 ; Att. General V. Lewes—(1849) 8 Ha. 32 ; Re Bowen (1893) 2 Ch. 491.
(x) In Re Tyler—(1891) 3 Ch. 252.
(y) Chamberlayne V. Brockett—8 Ch. 206 (1872).
(z) Commissioners of Charitable Donations V. De Clifford—1 Dr. & W. 245.
(a) Re Bowen (1893) 2 Ch. 491.
(b) 1 Mac. & G. 460—Tudor on Charity p. 81.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
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chand (c), it was held by the Judicial Committee that the extent of the testamentary powers of the Hindus must be regulated by the Hindu law and the peculiar doctrine of the English law against perpetuity, a doctrine of a technical character not founded on any principle of general jurisprudence, was inapplicable. The same principle was affirmed by Sir Barnes Peacock, C. J. in Gobordhan Bysack V. Sham Chand (d) where he said that the validity of the will must be determined according to Hindu law' alone. If that law contains no rule against perpetuities we must hold that a devise is not by that law invalid upon the ground that it tends to create a perpetuity. From these decisions you are not to conclude that Hindu law encourages tying up of property for ever, or recognises no limitations whatsoever as regards the creation of future interests. The observations of Sir B. Peacock, C.J. quoted above were explained by the learned Chief Justice himself in a subsequent decision (e) as meaning no more than that the English law against perpetuities could not be engrafted upon Hindu will, and that the answer to the question, whether Hindu law warrants the creation of a perpetuity either by will, or by a deed of gift, must depend upon the Hindu law alone, and not upon Hindu law supplemented by English law. It is true that there is no text of Hindu law directly bearing on the subject, but the mere silence of any system of law as to the legal effect of a particular juristic act is in no way conclusive upon the question of its validity (f). It may be that the question was of no practical importance in early Hindu law where joint ownership was the normal feature of society and individual ownership an exception. As regards the creation of future interests however, a rule far more stringent than the English doctrine against perpetuities, has been evolved by our courts of law out of the principles of Hindu law relating to gift of property. It has been laid down by the Judicial Committee in Tagore V. Tagore (g) that to make a gift valid

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(c) (1857) 1 Boulnois 266.
(d) Bourke p. 282.
(e) Kumar Ashima Kristo Deb V. Kumar Kumar Kristo Deb—2 B.L.R. O.C. 11.
(f) Mukhopadhyay on Perpetuities p. 59.
(g) 9 B. L.R. 377.

CENTRAL LIBRARY

under Hindu law the donee must be a sentient being in existence at the time of the gift. The law of wills as applicable to the Hindus being moulded upon the law of gift, the same principle applies in the case of testamentory bequest, and the person in whose favour any interest is created by the testator, must be in existence at the death of the testator. There are indeed two exceptions, viz. first, the case in which the donee is an infant in the womb, and secondly, where he is a son to be adopted by the widow of the testator under an authority from him. But barring these exceptions, which are more apparent than real, no future interest can be created by a Hindu, either by a deed *intervivos* or by will in favour of an unborn person.

Section 101 of the Indian Succession Act of 1865 embodied for the first time the rule of perpetuities under the Indian law. Under this section no bequest is valid whereby, the vesting of the thing bequeathed, may be delayed beyond the life time of one or more persons living at the testator's death and the minority of some person who shall be in existence at the expiration of that period and to whom if he attains full age the thing bequeathed is to belong. This is somewhat different from the English rule ; for under English law, a period of 21 years is allowed in gross irrespective of the existence of a minor, whereas according to Indian law it is only when the donee is a minor that the period of majority is allowed to be added to the life or lives in being. The age of majority is also 18 under the Indian law, and it is 21 only in those exceptional cases, where a guardian of the minor has been appointed by a court, or his property is under the management of the Court of Wards (h).

The Hindu Wills Act of 1870 extended the provisions of this section, amongst others, to the Hindus ; but in spite of that it was held authoritatively by the different High Courts in India that sections 99-101 of the Succession Act would neutralise the provision of section 3 of the Hindu Wiils Act which laid down that the Act did not authorise the creation of any interest in property which could not have been created before. The contrary view taken by Wilson,

(h) Vide Sec. 3 Indian Majority Act.

CENTRAL LIBRARY

J. in Alangamonjori V. Sonamoni (i) was reversed in appeal (j). In 1882 the Transfer of Property Act was passed and section 14 of the Act enacted with regard to transfers *intervivos* the same rule against perpetuities as was laid down in respect of testamentary bequest in section 101 Indian Succession Act. By virtue of the saving clause contained in section 2, these provisions also did not affect any rule of Hindu law. The rule that a Hindu could not dispose of his property by gift or will in favour of an unborn person was felt to be an intolerable restriction upon the free disposition of property. To remove this disability three Acts were passed viz. (1) the Madras Act I of 1914 (which applies to the whole of the Madras Presidency with the exception of the town of Madras); (2) Hindu Disposition of Property Act which is an Act by the Indian Legislature and applies to the whole of British India with the exception of the Madras Presidency and (3) Madras Act VIII of 1921 which applies to the town of Madras only. It is declared by all these acts that a transfer *inter-vivos* or disposition by will of any property by a Hindu shall not be invalid by reason only that the transferee or legatee is an unborn person at the date of the transfer or the death of the testator as the case may be. The period within which such gift or bequest shall vest, is the same as laid down in section 14 of the Transfer of Property Act and section 101 Indian Succession Act. As the doctrine laid down in Tagore V. Tagore (k) has now been modified by the enactments mentioned above, there is no inconsistency now between the provisions of section 14 T. P. Act or section 101 of the Succession Act (which has been re-enacted as section 114 of the consolidated Succession Act of 1925) and any principle of Hindu law, and that may be the reason why the saving clause contained in section 2 of the Transfer of Property Act 1882 has been dropped in the Amended Act of 1929.

This, in short, is the law of Perpetuities which governs the Hindus at the present day. Now a Hindu idol is a juristic person which is capable of receiving

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(i) 8 Cal. 157.
(j) Vide 8 Cal. 637—See also Radhaprasad V. Ranimoni—38 Cal. 188; Jairam V. Kuverbai—9 Bom. 491.
(k) 9 B.L.R. 377.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
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Law of Perpetuity has no application to a gift in favour of an idol.

and holding property. An idol, however, is *caput mortum* and does not possess any powers of alienation. An endowment created in favour of a deity therefore must necessarily be a tied up or perpetual estate. Once it is recognised that a Hindu can make a gift in favour of an idol, you cannot break in upon that principle by engrafting upon it any law of perpetuity (l). Thus absolute gifts of land or money perpetually to an idol or for other religious purposes have been held to be valid in Hindu law from early time (m). "Was there a valid dedication of the premises for religious purposes ?" thus observes Sale. J. in Bhaggobutty Prosanna V. Gooroo Prosonna (n), "If there was this intention on the part of the testator, the dedication will not be invalid merely by reason of its transgressing against the rule which forbids the creation of a perpetuity". The same observations were reiterated by the learned Judge in the subsequent case of Profulla Chandra Mullick V. Jogendra nath (o). The Full Bench decision of the Calcutta High Court in Bhupati Nath V. Ram Lall (p) settled the point that the principle of Hindu law laid down in Tagore V. Tagore which prohibits a gift to a non-existent being has no application to a religious trust and cannot invalidate a bequest to trustees for establishment and worship of an image after the death of the testator.

To claim exemption from operation of the rule against perpetuities, it is essential that the dedication should be a real *bona fide* one and not a mere device to tie up the property in the donor's family. In Sookhmoy Chandra Das V. Sm. Monohari (q), a Hindu testator directed that his estate should remain in tact and that 5/16th of the income only should be spent for worship of certain deities and for maintenance of family members for ever. It was held that under the Hindu law such disposition was invalid. You will see later on, that a dedication

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(l) Vide the observations of Markby, J. in Kumar Ashima Kristo V. Kumar Kumar Kristo—2 B.L.R. 0.C 11 at 47.
(m) Vide Mullick V. Mullick—1 Knapp 245; Juggut Mohini V. Sookheemoney—14 M.I.A. 289.
(n) 25 Cal. 112.
(o) 9 C.W.N. 528.
(p) 37 Cal. 128 (F. B.)
(q) 12 I.A. 103.

CENTRAL LIBRARY

of property may be of a partial character, and beneficial interest may be given to devisees in a certain order subject to a trust for religious purposes. In such cases there are generally provisions for perpetual descent and restrictions on alienation of the property. Such restrictions would obviously be invalid for violating the perpetuity rule, and the estate will descend as on intestacy, the heirs at law being liable to maintain the proper expenses of religious rites and ceremonies (r).

In case of a private trust of a non-religious character, for the maintenance and support of the donor's family members, the rule against perpetuities will apply, the trust not being charitable in the proper sense of the word. Thus a trust settling properties for the maintenance of the members of the family of the settlor, born or to be born, creating a perpetuity regarding the properties constituting the family fund under the trust, and limiting for an indefinite period, the enjoyment of the profits thereof is not valid (s). When the estate created is of a secular nature, though the motive be religious, it would not amount to religious endowment in law, and the rule against perpetuities will apply (t). Following the English decisions it has been held by the Calcutta High Court that an immediate gift to charity for charitable uses, with a gift over on an event, which may be beyond the ordinary limit of perpetuities, to another charity is not invalid. In this case there was a bequest in favour of the Lower Circular Road Baptist Church subject to certain conditions and in the event of the non-fulfilment of the conditions, there was a gift over in favour of a Howrah Baptist Church and other charitable and religious institutions. It was held that there was nothing illegal or impossible in the conditions and as they were not fulfilled the gift over came into operation (u).

You will notice that section 18 of the Transfer

(r) See Sonotun Boysack V. Juggut Soondree—8 M.I.A. 66 ; Ashutosh Dutt V. Durga Charan—6 I.A 182; Promotho Dasee V. Radhika Persaud—14 B. L. R. 175.
(s) Ajit Kumar Mitra V. Tarubala—63 Cal. 209.
(t) Anantha V. Naga Muthu—4 Mad. 200.
(u) Administrator General of Bengal V. Hughes—40 Cal. 192.

CENTRAL LIBRARY

of Property Act expressly makes an exception to the perpetuity rule when the transfer of property is for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety etc. There is no such exception provided in the Indian Succession Act. It was held by the Calcutta High Court in Jones V. Administrator General of Bengal (v) that section 101 of the Succession Act (which corresponds to section 114 of the present Act) applies to religious and charitable gifts as well, there being no exception provided in the Act to the application of the perpetuity rule in such cases. The decision does not seem to be correct. It has been rightly pointed out (w) that both section 14 of the T. P. Act as well as section 114 of the Indian Succession Act apply only to gifts and bequests to living persons and not for religious and charitable purposes. The reference to the minority of some person, who shall be in existence and to whom if he attains full age the thing bequeathed is to belong, makes it clear that it has no application to such cases. Sectton 18 of T. P. Act is thus quite superfluous.

Direction for accumulation.

As the law does not favour tying up of property, it looks askance also at any device by which the income is directed to be hoarded and accumulated for an unreasonable period of time. There is therefore a rule against accumulation in many legal systems which prescribes the limit of time beyond which accumulation of income is not permitted. The English law as to accumulation of income is now embodied in the Law of Property Act 1925 (x) which replaced the Thelluson Act of 1800. The law forbids the accumulation of income for a larger period than (1) the life of the grantor or settlor, or (2) a term of 21 years from the death of the grantor, settlor or testator, or (3) the duration of the minority or respective minorities of a person or persons living or in the mother's womb at the death of the grantor, settlor or testator or (4) the duration of minority or respective minorities of any person or persons who would, under the instrument, if of full age, be entitled

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(v) 46 Cal. 485.
(w) Vide Mayne's Hindu Law 892 (10th Edn.), §754.
(x) Section 164.

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ADVANCEMENT OF LEARNING
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to the income directed to be accumulated. There are certain exceptions to this rule viz. when accumulation is directed for payment of debts or raising portions, or respecting the produce of timber or wood.

It is well settled in England that the direction for accumulation beyond the limits prescribed above are not valid even when the disposition is in favour of charity. When there is an unconditional gift to charity, a direction for accumulation is invalid and the result is that the income becomes immediately distributable. The charitable institution to which the capital and accumulation are given absolutely has the same right as an individual to stop the accumulation and call for the immediate payment of the gift. The heir or next of kin are not let in (y).

There is no express text of Hindu law relating to restraint on accumulation of income. Such directions occur from time to time in Hindu wills and the practice is undoubtedly of some standing. In none of the cases decided by our courts has a direction to accumulate the income been declared to be *per se* illegal in Hindu law. The court leans against the validity of such directions when there is no disposition of the beneficial interest in the property, the income of which is directed to be accumulated, and the object of the testator is merely to create a perpetuity as is illustrated by the decisions in Shookomoy Chandra V. Monohari (z) or Kumar Ashima V. Kumar Kristo (a). Similarly when the grantor after making an absolute gift of property attempts to cut down the interest of the grantee by postponing enjoyment and directing accumulation of income, the court has pronounced such dispositions to be invalid (b). In Amritlal V. Surnomoye (c) a Hindu testator bequeathed his property to trustees and directed them to pay, every month out of the income of the estate, the necessary expenses of the household and

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(y) See Wharton V. Masterman—1895 A. C. 186 ; Martin V. Margham—14 Sim. 230 ; Re. Swain 1905. 1 Ch. 669 ; Tudor on Charities p.78.
(z) 12 I.A. 103.
(a) 2 B.L.R. O.C. 11.
(b) See Cally Nath V. Chandra—8 Cal. 378 ; Bramamayi V. Joges—8 B.L.R. 400 ; Mokoonda V. Ganes—1 Cal. 104.
(c) 24 Cal. 589.

CENTRAL LIBRARY

the worship of the idols and a fixed sum of Rs. 200/- to the widow of the testator. The balance of the income was to be accumulated and invested in Government security. The testator authorised his widow who was appointed an executrix along with the two other executors, to adopt three sons in succession, in case the previously adopted sons died without male issue, and the entire corpus of the estate together with the accumulated income was to be handed over to the adopted son, but only after the death of the widow and not during her life time. The plaintiff claiming as the validly adopted son of the testator under the authority given by the latter, instituted the suit, and claimed immediate possession of the corpus and the income subject to payment of the monthly allowance to the widow on the ground that the direction to accumulate the income till the death of the widow was void. Jenkins, J. held that the plaintiff was proved to have been validly adopted, but as the direction regarding accumulation of income was not illegal the suit was dismissed. "I hold" thus observed the learned Judge "that it is not incompetent for a Hindu with proper limitation to direct an accumulation of the income of property which under his will vests in his executor or trustees.....If accumulation is permissible then in the absence of the specific provision, the limit must be that which determines the period during which the course or devolution of property can be directed or controlled by a testator, and applying that test to the present case I am of opinion that the accumulation directed in the present case during the widow's life time is not in excess of that permitted by law". The learned Judge further said that the fact that the object of the testator's bounty could not be ascertained at the testator's death, would not be a necessary indication of illegal remoteness. On appeal (d) the judgment of Jenkins. J. was reversed on the ground that the authority given by the testator to adopt a son was not valid by the Hindu law as it was not given to the widow alone, but to her along with the other executors, and as the paintiff had acquired no title to

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(d) 25 Cal. 662.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
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the property by virtue of adoption the suit must necessarily fail. Of the three Judges composing the appeal bench, Trevelyan J. addressed himself to the question relating to the validity of the direction to accumulate the income during the life time of the widow, and the opinion expressed by him was, that direction to accumulate which was not accompanied by a present gift of the beneficial interest in the property was not valid in law. The decision of the appeal court was affirmed by the Judicial Committee (e), but their Lordships did not express any opinion on the validity or otherwise of the direction for accumulation.

The view expressed by Jenkins. J. was accepted by Harrington. J. in Rajendra Lall V. Raj Kumar (f) and it was held that in Hindu law a direction to accumulate is not *per se* illegal, and such a direction should be given effect to if it is not opposed to public policy and not given for an illegal object or otherwise inconsistent with Hindu law. In this case there was a direction by the testator that the surplus income of the trust property should be deposited in the Bank of Bengal till it amounted to Rs. 10,000/- and the proceeds were to be spent in feeding poor indigent Hindus. The direction was held to be valid, as there was nothing illegal or against public policy in it and the object of the testator's bounty was a perfectly valid charity.

In Nafar Chandra Kundu V. Ratan Mala (g) a direction to accumulate the income of a property for the marriage expenses of an unmarried son of the testator was held valid. It goes without saying that such directions are always valid if the object is to create a fund for payment of debts or to benefit a minor donee to whom the beneficial interest is given (h). A direction to accumulate together with a gift of the accumulation is not bad unless it offends some other and independent rule of Hindu law (i). When a property is given to a deity but there is a direction

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(e) 27 I.A. 128.
(f) 34 Cal. 5.
(g) 15 C.W.N. 66.
(h) Per Trevelyan, J. in Amritlal V. Sarnomoye—25 Cal. 662 at p. 691.
(i) Ramlal Sen V. Bidhumukhi—47 Cal. 76.

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that the Shebait should not spend the entire income, and some portion of it should be accumulated and never spent, such direction would certainly be void as repugnant to the grant. The position may be otherwise if there is no intention on the part of the grantor to give the property absolutely to the deity (j). Section 17 of the Transfer of Property Act, as it stands at present, lays down the limits within which accumulation is permissible under Indian law. The section is applicable to Hindus, and consequently the more general rule of accumulation in Hindu law as set out above, can be said now to have been replaced by the specific provisions of this section. Under this section accumulation of income is not permissible beyond the life of the transferor or a period of 18 years from the date of the transfer whichever is larger. If there is any direction for accumulation in any instrument of transfer which exceeds these limits the income would be distributable immediately at the close of the larger of the two periods specified in the section. Exceptions are made only in cases where such directions are given for payment of debts or for making provisions of portions for children or remoter issue of the transferor, or for the preservation and maintenance of the property transferred. Section 18 of the Transfer of Property Act lays down *inter alia* that these restrictions shall not apply in the case of the transfer of property for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind. Transfer for religious or charitable purposes are thus exempted from the rule against accumulation. Such directions may however be void if as said above, they are repugnant to the nature of the grant. An absolute transfer of property to a charity cannot be cut down by directions regarding accumulation of income and the charity would have the righ to demand immediate payment of the income.

Bankruptcy of the settlor how far affects the trust.

The only other topics that require consideration in this chapter are :—(1) how far the validity of a charitable trust is affected by the bankruptcy of the settlor, and (2) whether apart from bankruptcy, it

(j) Vide the observations of Mookerjee, J. in Sarojini V. Gnanendra —23 C.L.J. 241.

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can be avoided by his creditors ? So far as the first point is concerned, a charitable trust being *ex hypothesi* a voluntary transfer, is liable to be annulled on the transferor being adjudicated an insolvent within two years of the date of the transfer. The law on this point is contained in section 55 of the Presidency Towns Insolvency Act and section 53 of the Provincial Insolvency Act. Section 55 of the Presidency Towns Insolvency Act runs as follows :- "Any transfer of property not being a transfer made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, shall, if the transferor is adjudged insolvent within two years after the date of the transfer be void against the official assignee". Section 53 of the Provincial Act is worded in a slightly different manner. Under it, any transfer of property not being a transfer made before and in consideration of marriage or made in favour of a purchaser or incumbrancer in good faith, and for valuable consideration shall, if the transferor is adjudged insolvent, on a petition presented within two years after the date of the transfer, be voidable as against the receiver and may be annulled by the court. It will be noticed that though the Presidency Towns Insolvency Act makes use of the expression "void against the official assignee," it does not mean that such transactions which come within the mischief of the section are void *ab initio* ; they can only be avoided at the instance of the Receiver. Section 53 of the Provincial Act therefore is more appropriately worded. There is one difference between the two sections as regards the *terminus a quo* for calculating the period of two years. Under the Provincial Insolvency Act, a transfer could be annulled if the transferor is adjudged insolvent on a petition presented within two years after the date of the transfer. Thus a transfer will be hit by the section if it is within two years from the presentation of the insolvency petition even though it is more than two years from the date of the adjudication order. The Presidency Towns Act on the other hand avoids the transfer, if the transferor is adjudged insolvent within two years after the date of transfer. The words "is adjudged insolvent" mean the same thing as the

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expression "becomes bankrupt" in English law, and refer to the date of commission of the first of the acts of insolvency which are proved to have been committed by the debtor within three months next preceding the date of the presentation of the Insolvency petition (k). Under both the Acts the insolvency of the transferor within the periods mentioned aforesaid renders the transfer liable to be annulled at the instance of the official assignee or the receiver as the case may be, the only exceptions being made in cases of antinuptial settlements and transfers in favour of purchasers for value in good faith. As a charitable trust is not for valuable consideration the presence or absence of good faith is immaterial, and such trusts cannot come within the exceptions mentioned in the sections.

Avoidance of charitable trusts at the instance of creditors.

Even if a charitable trust does not come within the mischief of the above provisions of insolvency law it can still be avoided at the instance of creditors either existing or future, if it relates to immovable property, and was made with intent to defeat or delay their claims. The English law on this subject was previously contained in Statute 13 Eliz. Chapter 5. That Statute now repealed has been re-enacted in a modified form by section 172 of the Law of Property Act 1925. In India section 53 of the T. P. Act, embodies the Statute law on the point, and sub-section (1) provides that "every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed". The sub-section goes on to say that nothing in it shall impair the rights of a transferee in good faith and for consideration or affect any provision of law relating to insolvency. It further provides that a suit brought by a creditor to avoid a transfer on such ground, shall be instituted on behalf of or for the benefit of all the creditors. As both good faith and consideration are necessary to claim exemption from the operation of the sub-section, a charitable trust obviously is outside the pale of the exempttion as it lacks the element of consideration. To invalidate a transfer under this

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(k) Vide Mulla's Law of Insolvency p. 435.

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provision of law it is however necessary that the transferor should have the intention to delay or defeat the claims of his creditors. The section, as it stood prior to the amendment of 1929, provided that a presumtion would arise that the transferor had the intention of defeating or delaying his creditors when the transfer was made gratuitously or for a grossly inadequate consideration. This is now omitted and the mere fact that the transfer is without consideration would not raise a presumption that the transferor had any fraudulent intention within the meaning of the section. It is true that fraudulent intention can seldom be proved by direct evidence ; it must be an inference from all the facts and circumstances of a particular case. It is true also that a man is presumed to intend the natural consequences of his action. The facts that the settlement was voluntary and that the creditors were actually prejudiced by the settlement, would not however be conclusive in law to prove that the settlor had the intention of defeating or hindering his creditors. In Freeman V. Pope (l), Lord Hatherley said : "It is established by authorities that in the absence of any such direct proof of intention (to defeat or delay) if a person owing debts makes a settlement which subtracts from the property, which is the proper fund for payment of those debts, an amount without which the debts cannot be paid, then since it is the necessary consequence of the settlement that some creditors must remain unpaid, it would be the duty of the Judge to direct the Jury that they must infer the intent of the settlor to have been to defeat or delay his creditors and that the case is within the statute". This view was not accepted in the later case of Exparte Mercer, Re Wise (m) where Lord Esher rejected the argument that if the necessary consequence of the transfer was to delay or defeat creditors, therefore "as a proposition of law the tribunal which had to consider whether he did intend to defeat or delay his creditors was bound to find that he did". "No doubt" thus observed the learned Master of the Rolls "in coming

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(l) L.R. 5 Ch. App. 538.
(m) 17 Q.B.D. 290.

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to a particular conclusion as to the intention in a man's mind, you should take into account the necessary result of the acts which he has done. I do not use the words 'necessary result' metaphysically, but in their ordinary business sense, and of course, if there was nothing to the contrary you would come to the conclusion that the man did intend the necessary result of his acts. But if other circumstances make you believe that the man did not intend to do that, which you are asked to find that he did intend, to say that, because that was the necessary result of what he did, you must find contrary to the other evidence, that he did actually intend to do it, is to ask one to find that to be a fact which one really belives to be untrue in fact". This decision was approved in the subsequent case of Re Holland, Gregg V. Holland (n). The view that emerges from these somewhat conflicting pronouncements appears to be this : The fact that the transfer had the effect of prejudicing the creditors of the transferor, would certainly be a material circumstance in coming to the conclusion as to whether the latter had an intention of defeating or delaying the claims of the creditors. The court can certainly draw a presumption adverse to the settlement, on the strength of the well-known maxin that a man is presumed to intend the ordinary and natural consequences of his acts. The presumption however is not an irrebutable or conclusive presumption of law. The effect of the presumption would be that the burden would shift on to the person who seeks to uphold the transfer, to prove affirmatively that no such intention existed. In other words the court should rest its decision on all the facts and circumstances proved in a case, and not merely upon the fact that the transfer had actually the effect of prejudicing the creditors of the transferor (o).

(n) (1902) 2 Ch. 360.
(o) Vide Godrey V. Poole—13 A.C. 497 at p. 503.

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LECTURE IV.

Religious Trust in favour of Idols. (Debutter).

In the last two lectures I have discussed the essentials of valid religious and charitable trust according to Hindu law. I have attempted to explain, by whom, in what manner and for what purposes such trusts could be created and the provisions of law they must conform to, in order to make them legally enforceable. The propositions laid down are all of general application and I have not referred to particular provisions of law which are applicable only to particular forms of trust. It would be necessary now to descend into particulars and set out the nature and incidents of certain well known types of religious trust which are known to the Hindus from very early times and which have acquired such special characteristics as cannot be conveniently included in any general discussion. There are two kinds of religious trusts, both of which are ancient and highly popular in Hindu Society ; one of them is known as *Debutter* or endowment in favour of an idol, while the other can be described as *Mutt* or *Matham* which means a religious establishment endowed for the benefit of certain classes of ascetics or religious men belonging to particular sects or congregations. Each of these types of trust has to be dealt with separately and unless the rights and duties of different classes of persons interested in or having control over these endowments are ascertained, it would not be possible to appreciate the law relating to the administration of these trusts. I will begin with *Debutter* or endowment for worship of deities, which is the commonest form of religious trust known to the Hindus.

It goes without saying that an endowment for worship of idol could not be thought of until idol worship became an established feature of Hindu religion. I have told you in the first lecture that no trace of idol worship existed during the Vedic period.

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No idol worship in the Vedic Age.

The Vedic gods might have been, at the outset, mere idealised forms of certain radiant and beneficent forces of nature. They are often represented as human in form and are given various attributes which relate them to various natural phenomena. Some of them travel in chariots and carry arms. Thus *Indra* wields a thunderbolt with which he destroys the demon *Vritra* and lets loose the water. But as Ragozine points out that "though the gods were given human attributes, they were not transformed into reproductions more materially tangible than the spoken word" (a). The Vedic sages in course of time looked beyond these natural phenomena and caught a glimpse of the eternal and immutable principle that manifests itself in the various forces of nature but yet transcends them all. In the celebrated *Hansabati Rich* it is said "As light He dwells in the luminous sky, as Vasu (air) He dwells in the mid space, as Hotri (fire) He exists on the sacrificial alter, as a guest He exists in the house, as life He exists in men, as Rita (truth or divine order) He exists everywhere ; as supreme entity He exists. He shines in sacrifice, in the sky, in water, in light, in mountains, and in truth" (b). The different gods were now spoken of as different manifestations of the same entity. "The wise call him Indra, Agni, Varuna, that heavenly golden winged Marut. To what is one, the sages give many a name, they call him Agni, Jama and Matariswan" (c). These ideas paved the way for the development of philosophical monism that is found in the Upanishads.

Although there are many gods mentioned in the Vedic texts, you would remember one peculiar feature of Vedic religion which led Maxmuller to give it the name of Henotheism. Each god was in his turn the highest God, the creator and sustainer of the universe, the protector of man and giver of all happiness to him. Thus Indra is spoken of as the sole Lord of the universe "who alone is the Lord of men and wealth" (d) ; "He supported and spread the earth" (e). Of

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(a) Ragozine—Vedic India p. 133.
(b) Rigveda V. IV. 40.5.
(c) Rigveda I. 164. 46.
(d) Rigveda 1. 7.9.
(e) Rigveda 1. 103.2.

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Varuna it is said "who like Varuna is the Lord of wealth"? (f). Soma is called the supporter of heaven (g). Again *Hiranyagarbha* is called the sole Lord (h).

Pouranic Gods.

The gods that are worshipped by the Hindus at the present day are mostly Pouranic gods whose legends are given in the various Purans, though there are some divinities of Tantric origin. When exactly the Pouranic form of worship was introduced in Hindu society, it is difficult to say. But it was certainly after the death of Buddha. Strange as it might appear to be, idol worship was an indirect offshoot of the Buddhist religion. Buddhism did not trouble about the existence of any Supreme Being, but it encouraged worship of relics, sanctuaries, sacred structures like the *stupas* etc. At about the first century A.D. the worship of Buddha images became a feature of the Northern or Mahayana School of Buddhism which introduced also the worship of images of previous Buddhas, the various Bodhisatwas and their consorts and a multiplicity of other gods as well. There is reason to believe that side by side with the rise of the Northern School of Buddhism the worship of Hindu gods and goddesses as described in the Purans began to be more and more popular and it was largely encouraged by the Gupta Emperors between the 4th and 6th Century A.C. The advent of Sankara, the Hindu religious reformer, marks the decay or extinction of Buddhism in India. Although that great philosopher and saint propounded his celebrated non-dualistic doctrines on the basis of the hoary Upanishads, he did not discourage the Pouranic form of worship or the idea of a personal God so far as the ordinary people were concerned. The subsequent philosophers like Ramanuja, Madhya, Ballabacharya and others who founded the various sects of Hinduism that are found at the present day laid supreme stress on the existence of a personal God and the way to reach him through *Bhakti* or devotion. These sages freely relied on Pouranic texts in support of the doctrines they propounded. Except in cases

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(f) Rigveda 1. 143.4.
(g) Rigveda IX. 76.1.
(h) Rigveda X. 121.1.

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of certain dissenting sects, image worship can be taken to be an established feature of the popular Hindu religion, though even the Purans themselves do not regard it as the best or highest form of worship (i). Though there are numerous gods in the Hindu pantheon, only a few of them are worshipped in temples. The majority of temples are dedicated to Siva, Vishnu, Sakti, Surya and Ganapati. The Siva temples, some of which are very large and picturesque, are to be found all over India and so also are the temples of Vishnu who is worshipped in His various forms or incarnations as Sri Krishna, Ram Chandra, Narasingha, etc. *Sakti* is the female principle who is spoken of as the consort of Siva. The Purans as well as the Tantras describe her various forms, such as Durga, Kali etc. and in all these forms she is worshipped in India. Ganesh or Ganapati, described as the son of Siva, is much popular in western India, while Kartikeya, the other son of Siva, counts his worshippers by thousands in southern India. Surya is the Sun God of the Aryans and is admittedly one of the earliest objects of worship. It is said sometimes that the Vedic mythology was merely elaborated in the Puranas. This is not wholly or even substantially true. The sources of some of the legendary stories occurring in the Purans can, no doubt, be traced in the Vedas but it would not be correct to say that the Pouranic gods were mere reproductions of the Vedic gods. There is nothing in the Vedas corresponding to the Pouranic Trinity of Brahma, Vishnu and Siva. Brahma in the Vedic text signified the Sun, or was a synonym of prayer. Vishnu in the Rigveda occupied a rather subordinate position. He was also identified with the Sun, and his three strides encompassing the three spheres of existence, as suggestive of all pervasiveness constituted the foundation of the Pouranic legend of the three steps of Vishnu in his incarnation of the "Dwarf". Siva hardly appears as the name of any deity in Vedic time. The expression "Siva" means propitious or benignant. *Rudra*, one of the Vedic deities, was, in all probability another name of *Agni* or fire, and the Purans identified Siva with Rudra.

(i) See Bhagabat Puran, 7th Skanda.

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We hear very little of Ganapati or Kartikeya in the Vedas. Kali, who is described in the Purans as a consort of Siva, was spoken of in Mandukopanishad as one of the seven tongues of fire, while the name of "Uma" occurs in the Kenopanishad, where she is described as a resplendent lady who gave lessons in divine knowledge to the gods. Sri Krishna, who looms so large in the Pouranic literature, is mentioned only as a scholar and not a deity in the Vedas, though many of the legendary stories attributed to him in the Purans are traceable to similar legends associated with *Indra* in the Vedic literature.

It is not necessary for our present purpose to pursue these discussions any further. Though the Purans are by no means uniform, the legends associated with the various gods are fairly well known and have been the basis of a considerable mass of poetic literature in later times. One cardinal principle underlying idol worship you would always bear in mind—and this has some bearing on the law relating to gift of property to idols—that whichever god the devotee might choose for purposes of worship and whatever image he might set up and consecrate with that object, the image represents the Supreme God and none else. There is no superiority or inferiority amongst the different gods. Siva, Vishnu, Ganapati or Surya is extolled, each in its turn as the creator preserver and supreme lord of the universe. The image simply gives a name and form to the formless God and the orthodox Hindu idea is that conception of form is only for the benefit of the worshipper and nothing else (j).

Building and consecration of temples.

Along with the establishment of idol worship, in Hindu religion, elaborate rites and ceremonies, it seems, were introduced by Brahminical writers in regard to building of temples and consecration and purification of idols. I will touch these matters very briefly. A temple is the house of the deity and many of the rules of construction of a temple are practically the same as are prescribed for construction of a dwelling house, the additional rules being laid down to ensure greater sanctity of the structure that is

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(j) Vide observations of Chatterjee. J. in Bhupati V. Ramlal—37 Cal. 128.

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meant for the abode of a deity. One who wants to build a temple has got to select the proper time for building with reference to astrological calculations. There are detailed rules relating to selection of the site which include examination of the nature and colour of the soil, its odour, taste, solidity etc. After the site is selected, it is ploughed up and seeds are sown in it. As soon as the seeds germinate, the crop is allowed to be grazed over by cows. The cardinal points are then to be ascertained for giving this structure an auspicious aspect and there are rules to be observed regarding the materials to be used and the location of doors, windows, etc. The important religious ceremony is the *Vastu Jaga* in honour of *Vastu Puruśha* or *Vastu Debata* who presides over dwelling house, with oblations of milk, rice and sugar. This *Vastu Jaga* is a very ancient ceremony which dates from the Grihya Sutras of Aswalayan and Goville. The Purans, however, contain a mythological legend regarding the Vastu Purusha and the modern form of the sacrifice in honour of this deity is described among others in Matsya Purana, Brihat Samhita and Devi Purana. All these ceremonies in connection with the building of a temple have been described with elaborate fullness by Pandit Prana Nath Saraswati in his Tagore Lectures on the Hindu Law of Endowment (k). They are of little importance to a lawyer, as no question of law could possibly turn upon the manner in which a temple has been consecrated. Even if the rules prescribed by the Smriti writers are not obeyed, the founder of the temple may incur sin but the legal rights over or in respect of the temple cannot in any way be affected by these omissions.

Images—their description.

Images, according to Hindu authorities, are of two kinds: the first is known as *Sayambhu* or self-existant or self-revealed, while the other is *Pratisthita* or established. The Padma Puran says "The image of Hari (God) prepared of stone, earth, wood, metal or the like and established according to the rites laid down in the Vedas, Smrities and Tantras is called the established; .... where the self-possessed Vishnu has placed himself on earth in stone or

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(k) Vide Chap. III, Lectures 4 and 5.

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wood for the benefit of mankind, that is styled the self-revealed" (1). A Sayambhu or self-revealed image is a product of nature, it is *Anadi* or without any beginning and the worshippers simply discover its existence. Such image does not require consecration or Pratistha. All artificial or man-made images require consecration. An image according to Matsya Purana may properly be made of gold, silver, copper, iron, brass or bell metal or any kind of gem, stone or wood, conch shell, crystal or even earth (m).

Some persons worship images painted in wall or canvass, says the Brihata Purana and some worship the spheroidical stones known as Salgram (n). Generally speaking the Pouranic writers classify artificial images under two heads: viz. (1) Lepya and (2) Lekhya. Lepya images are moulded figures of metal or clay, while Lekhyas denote all kinds of pictorial images including chiselled figures of wood or stone not made by moulds. In the case of Goswami Geeridhariji V. Ramanlalji (o) which went up to the Privy Council, the subject matter of dispute was the pictorial image of the head of the Ballavacharya Sect and not of any deity. Images again may be permanent or temporary. Temporary images which are set up for periodical Pujas like Durga, Saraswati, etc. are generally made of clay and are immersed in a river or tank after the puja is over.

Pratistha or consecration of images.

The ceremonial rites and observances connected with Pratistha or consecration of an idol are long and elaborate. The accounts are to be found in works like *Matsya* and *Devi Puranas*, the *Brihata Samhita*, *Haya Sirsha Pancharatra*, *Pratistha Mayukha* of Nilkantha and *Deva Pratistha Tatwa* of Raghunandan. The ceremonies as described in these various treatises are by no means uniform. It seems that something like customary rites have grown up which are followed usually by people of particular provinces or belonging to particular religious sects. Generally speaking all these ritualistic treatises insist on a preliminary ceremony by which the idol is purified and cleansed

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(l) Padmà Purana Uttara Khanda.
(m) Matsya Purana quoted in G. Sastri's Hindu Law (8th Edn.) Chap. XIV p. 653.
(n) Vide G. Sastri's Hindu Law Chap. XIV (8th Edn.) p. 653.
(o) 16 I. A. 137.

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from all impurities that attach to it at the hands of the artist. For this purpose a separate structure known as *Adhivas Mandap* is set up together with an ablution hall known as *Snan Mandap*. The image is first carried in procession to the *Snan Mandap*. The founder then utters the *Sankalpa Mantra* or formula of resolve and the priests begin their functions. The image is bathed and washed and then follow the different ceremonies including *Homa* or offering of oblation to the sacred fire and *Pran Pratistha* or vivification ceremony by which the eternal spirit is supposed to be infused into the idol. The image is then taken to the temple and the temple itself is formally dedicated to the deity. The whole idea is that by these sacred rites, a simple piece of wood or stone becomes a fit receptacle of divinity. According to orthodox Hindu ideas Pratistha or consecration is the means by which the universal soul is localised and made to dwell at a particular place.

I have purposely avoided reference to the details of the *Pratistha* ceremonies. Those of you who are interested in the subject may do well to read the elaborate discussion of these rites given in P. N. Saraswati's Tagore Law Lectures on Hindu Law of Endowments. As I have already indicated, there is no unanimity of opinion amongst the Brahminical writers as regards the ceremonies that are to be observed at the installation of a particular deity. The rites themselves show signs of development or change in course of time and differ at different places. Even the Pran Pratistha or vivification ceremony which is supposed to be all important has not been noticed in Brihata Samhita. Ordinarily when an idol is installed in a temple, the presumption is that the ceremonies have been properly performed. I do not think that even if it is proved by evidence that some of the ceremonies were omitted, it would affect the rights which the deity as a juristic person acquires in law. In the case of Doorga Proshad V. Sheo Proshad (p) the Calcutta High Court observed that "According to Hindu notions when an idol has been consecrated by the appropriate ceremonies performed and Mantras pronounced, the deity of which the idol

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(p) 7 C. L. R. 278.

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is the visible image resides in it and not in any substituted image and the idol so spiritualised becomes what has been termed a juridical person." I will show in course of this lecture that even if the first part of these observations is taken to be a correct statement of the Hindu theory, it does not follow that the material image is the juridical person in whom the property dedicated to the deity vests in law. It is really the spiritual object which is embodied in the image and not the image itself that is regarded as the holder of the property. The fact that a properly consecrated image does not exist at the time of the gift does not affect the validity of the gift at all.

Worship of the idol.

After a deity is installed, it should be worshipped daily according to Hindu Sastras. The person founding a deity becomes morally responsible for the worship of the deity even if no property is dedicated to it. This responsibility is always maintained by a pious Hindu either by personal performance of the religious rites or in the case of Sudras by employment of a Brahmin priest (q). The daily worship of a consecrated image includes the sweeping of the temple. the process of smearing, the removal of the previous day's offerings of flowers, the presentation of fresh flowers, the respectful oblation of rice with sweets and water and other practices. "The deity in short is conceived of as a living being and is treated in the same way as the master of the house would be treated by his humble servant. The daily routine of life is gone through, with minute accuracy, the vivified image is regaled with necessaries and luxuries of life in due succession even to the changing of clothes, the offering of cooked and uncooked food and the retirement to rest" (r).

Reconstruction or purification of idols in case of defilement or destruction.

According to Hindu sages, an image becomes defiled if it is not worshipped regularly. Reconstruction or purification of the image is ordained in cases where the image is mutilated, broken, burnt, fallen down or removed from its place or is defiled by a beast or the touch of an out-caste or even when

(q) Vide Mitter. J. in Prasanna Deb V. Bengal Duars Bank—64 C. L. J. 379.

(r) Vide Mookerjee. J. in Ram Brahma V. Kedar—36 C. L. J. 478 at p. 483.

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hymns appropriate to other gods are recited before it (s). The rules for reconstruction or replacement of an idol are thus laid down in Hayasirsha Pancharatram (t). "Whatever is the material and whatever the size, of the image of Hari (God), that is to be renewed ; of the same material and of the same size, an image is to be caused to be made ; of the same size, of the same form and of the same material, should be placed there, either on the second or the third day (the image of) Hari should be established ; if it be established after that, even in the prescribed mode, there would be blame." The destruction of an image, as you shall see presently, does not cause an extinction of the religious trust that is created in its favour, and the rules of construction or replacement of an idol as set out above are most liberally construed. It is enough if an image is established substantially representing the old or is treated as such, and the fact that the replacement was not made within the prescribed time though blameable from the orthodox point of view does not affect the validity of replacement (u).

No religious trust by mere establishment of a deity. Debutter comes into existence only when property is dedicated.

The mere fact that an idol has been established does not by itself create a Debutter. A religious trust by way of Debutter can come into existence only when property is dedicated for worship or service of the idol. When there is no endowment in favour of an established idol, no trust in the legal sense of the term can possibly come into being ; it is only the moral duty of the person who founds the deity or his heirs to carry on the worship in such a way as they think proper. Thus if the ancestor makes no endowment, there is no legal obligation on the descendants to spend money for the worship of the idol ; and if one of them spends money, he can not bring a suit for contribution against his co-heirs (v). Now property can be given to an idol either at the time when it is consecrated or at any subsequent period and not only such property may be given by the founder or a Shebait, it might also consist of

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(s) Raghunandan's Deva Pratistha Tatwa. G. Shastri's Hindu law p. 654.
(t) Vide G. Sastri's Hindu Law Chap. XIV, p. 655 (8th Edn.).
(u) See Kali Kanta Chatterjee V. Surendra Nath—41 C. L. J. 128.
(v) Shamlal V. Huro Soonduree—5 W. R. 29 ; Bansilal V. Govindlal —34 Bom. L. R. 733.

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offerings or gifts made by worshippers who are unconnected wih the founder or the Shebait.

Dedicated property vests in the idol as a juristic person.

When property is given absolutely by a pious Hindu for worship of an idol, the property vests in the idol itself as a juristic person. This view, which as I have explained in the first lecture, is quite in accordance with the Hindu ideas and has been uniformly accepted in a long series of decisions of the different High Courts in India as well as by the Judicial Committee. As West, J. observed in Manohar Ganesh V. Lakhmi Ram (w), "The Hindu law recognises not only corporate bodies with rights of property vested in the corporation apart from its individual members but also juridical subjects or persons called foundations". The Hindu idol is a juridical subject and the pious idea that it embodies is given the status of a legal person and is deemed capable in law of holding property in the same way as a natural person. "The idol, deity or religious object" observed West and Buhler in their Digest on Hindu Law, "is looked upon as a kind of human entity." It is a sacred entity and ideal personality possessing proprietary rights (x). The Judicial Committee has pointed out on more occasions than one that it is only in an ideal sense that property can be said to belong to an idol, and the possession and management of it must in the nature of things be entrusted to some person as Shebait or manager (y). The legal principle has thus been summed up in one of the recent pronouncements of the Judicial Committee : "A Hindu idol is, according to long established authority, founded upon the religious customs of the Hindus, and the recognition thereof by courts of law, a 'juristic entity'. It has a juridical status with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would, in such circumstances, on analogy, be given to the manager of the estate of an infant heir. It is unnecessary to quote the authorities ; for this doctrine, thus simply stated, is firmly established." (z).

(w) 12 Bom. 247 at p. 264.
(x) See Thackersey V. Hurbhum—8 Bom. 432 at p. 456.
(y) See Prosunna V. Golap—2 I. A. 145.
(z) Pramatha Nath V. Pradyumna Kumar—52 I. A. 245 at 250.

CENTRAL LIBRARY

Two essential ideas in the conception of Debutter.

In the conception of Debutter therefore two essential ideas are involved : In the first place, the property which is dedicated to the deity vests in an ideal sense in the deity itself as a juristic person. In the second place the ideal personality of the idol is in the nature of things linked up with the natural personality of the Shebait, manager or Dharmakartta, who as persons entrusted with the custody and worship of the idol are obliged and empowered to do what may be required for the service of the idol and for the benefit and preservation of its property. The title to the Debutter property is in the idol and not in the Shebait, who is not and cannot be a trustee in the sense in which it is used in English law. The Shebait is however a trustee in the general and ordinary sense of the term, and as I have said in the first lecture, the distinction between legal and equitable ownership is a highly artificial distinction which had its origin in England owing to purely historical reasons and such distinction is not essential to the juridical conception of trust. The Sheabit holds the Debutter property for carrying into effect the pious purposes that are symbolised in the deity, and he is bound to carry out the directions given by the founder, in relation to the worship of the idol and management of its property.

Formalities of dedication.

A pious Hindu ordinarily dedicates property to a deity by following the usual ceremonies of *Sankalpa* and *Utsarga*. As has been explained in the previous lecture the performance of these ceremonies is neither essential nor conclusive for the purpose of proving dedication in law. You will remember that no express words of gift either directly or by way of trust are necessary to create a valid endowment (a). There is no necessity of any document in writing. If the donor chooses to dedicate property by executing a deed of Arpannama in favour of the idol the document is certainly registrable ; and the law of registration would also be attracted if a trust deed is executed by the founder by which immovable property of the value of Rs. 100/- or upwards is transferred to trustees for worship of an idol. If the dedication is by will, it goes without saying that the will must be

(a) Bhagobaty Prosanna V. Guru Prosanna—25 Cal. 112.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

signed and attested in the manner laid down by law. But the founder need not employ any of these forms. He can create an endowment merely by renouncing his right in a particular property in favour of the idol or the religious object for which the endowment is intended, and the law will impose the obligation of a trustee upon him or his heirs, or such other persons as have the custody of the deity and its property. The fact that the requisite ceremonies of Sankalpa and Samarpan were gone through would be only a relevant piece of evidence to show that the donor effectively renounced his rights in the property in favour of the religious purpose. All these matters have been discussed in the last lecture and the principles of law laid down there though in general terms are applicable to all kinds of endowment in Hindu law, whether made in favour of an idol, or any other religious object. It is not necessary to repeat all these matters in the present lecture. I will touch in details only those topics which have a particular bearing on the question of dedication of property to idols.

The principle of Hindu law that a donee must be in existence at the time of gift whether applicable to the creation of a Debutter endowment ?

In a Debutter endowment, as you have seen, the deity or idol is the recipient or donee of the endowed property which vests in it as a juridical person. To constitute a valid gift under Hindu law it is necessary that it must be accepted by a sentient being who is in existence at the time of the gift. This rule which was authoritatively laid down by the Judicial Committee in the case of Tagore V. Tagore (b) has been scrupulously followed ever since by all the High Courts in India. An attempt was made however in some of the decisions of the Calcutta High Court to carry the rule too far, and to hold that a gift to an idol which is not consecreated or in existence at the time of dedication is not valid. Thus in Upendra Lal Boral V. Hem Chandra (c) where one of the questions raised related to the validity of a bequest in favour of a non-existent idol, it was held by the learned Judges that "if there was a gift to the idol, it was bad, because there was no idol in existence at the time

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(b) 18 W. R. 359 ; I. A. Supp. 47.
(c) 25 Cal. 405.

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of his death, and further if there was a power to make such a gift the power was ineffective because on the authority of Bai Mativahu V. Bai Mamubai (d) we think that "a power must be to convey to a person who was in existence either actually or in contemplation of law at the death of the testator and the idol to which the dedication is sought to have been made was not then in existence". The learned Judges proceeded to say—"the deity no doubt is always in existence but there could be no gift to the deity as such and there was no personification of the deity to whom the gift could have been made, or who was capable of taking it". The same view was taken by Stanley, J. in Rojomoyi V : Troylukho (e) and it was held that a direction in the will of a testator to establish a 'thakur' to whom the entire residuary estate was to go was invalid. "Whether a gift be in '*presenti*' or in '*futuro*'", thus observed the learned Judge, "it is settled that the donee must be a person in existence and capable of accepting the gift at the time it takes effect—Tagore V. Tagore (f). That which cannot be done directly by gift cannot be done by the intervention of a trustee ; Krishna Ramani V. Ananda (g) ; Rajendra Dutt V. Sham Chand (h). An idol cannot be said to have juridical existence, unless it has been consecrated by the appropriate ceremonies ; and so has become spiritualised. Before this, the deity of which the idol is the visible image does not reside in the idol ; Doorga Pershad V. Sheo Pershad (i)." In Nagendra Nandini V. Binoy Krishna (j) Stephen, J. took it to be settled law that a bequest to a *thakur* not in existence at the date of the death of the testator was not valid. It may be noticed here that the case of Doorga pershad V. Sheo Pershad (k), to which reference was made by Stanley, J., is of a different type altogether. In that case an image of *Vishnu*, as also the Debutter property dedicated to it, were sold in execution of a money decree

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(d) 21 Bom. 709 ; 24 I. A. 93.
(e) 29 Cal. 260.
(f) 9 B. L. R. 399.
(g) 4 B. L. R. 231.
(h) 6 Cal. 106.
(i) 7 C. L. R. 278.
(j) 30 Cal. 521.
(k) 7 C. L. R. 278.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

against the Shebait, and the purchaser brought the image to his house and continued to conduct its worship. The Shebait's son set up another image of the god, and instituted a suit against the purchaser to recover the property but not the original image. It was contended on his behalf that the removal of the original image destroyed its sanctity and justified its replacement by another image, and in any event the property should be devoted to the worship of the second image also. The first contention was negatived and with it the second contention fell also. It was held by the learned Judges and quite rightly that no second image could be set up when an existing image continues fit for worship, the deity being intended by the founder to be worshipped by one image and not simultaneously by two. No doubt the learned Judges observed in course of their judgment that according to Hindu rites when an idol has been consecrated by appropriate ceremonies and pronounciation of Mantras, then and then only the deity of which the idol is the visible image could reside in it. But there is nothing in the decision which might be taken to lay down that a dedication is not valid unless a consecrated image is in existence at the date of dedication. This question was neither considered nor decided by the learned Judges. The authority of the cases referred to above has been overruled by the pronouncement of a Full Bench of the Calcutta High Court in Bhupati Smrititirtha V. Ram Lal (1). The main question referred to the Full Bench was: "Does the principle of Hindu law which invalidates a gift other than to a sentient being capable of accepting it, apply to a bequest to trustees for the establishment of an image and the worship of a Hindu deity after the testator's death, and make such a bequest void ?" The Full Bench answered the question in the negative. Sir Lawrence Jenkins who presided over the Full Bench in course of his judgment observed that the "rule which requires relinquishment should be to a sentient person does not forbid the gift of property to trustees for a religious purpose though that Purpose cannot in strictness be called a 'sentient person'. It would seem that the rule pro-

(1) 37 Cal. 128 (F. B.) ; 10 C.L.J. 355.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

pounded by Jimutabahan had regard rather to the general proposition for which he was contending i.e. that the act of the giver is the cause of property than to its application to particular objects of benevolence. The fiction that an idol is a person capable of holding property must be kept within its proper limits, and were we to accede to the argument that has been advanced before us, we should be allowing fiction to be built on fiction to the hindrance and not for the furtherance of justice." Mookerjee, J. in the same case held on a review of all the relevant texts that according to Hindu law the rule about the acceptance of a gift as a necessary condition for its validity was applicable to secular gifts only. There is no foundation for the assumption that the dedication to deity or for religious purpose stands on the same footing. In summing up the legal position the learned Judge observed as follows :—"The view that no valid dedication of property can be made by a will to a deity the image of which is not in existence at the time of the death of the testator is based upon a double fiction, namely, first that the Hindu deity is for all purposes a juridical person and secondly that a dedication to the deity has the same characteristics and is subject to the same restrictions as a gift to a human being. The first of these propositions is too broadly stated, and the second is inconsistent with the first principles of Hindu Jurisprudence." The provisions of Hindu law relating to secular gifts are therefore not applicable when the dedication is to the idol. Moreover,—and this was pointed out by Chatterjee. J., who was a member of the Full Bench —the conception of Hindu jurists was not that the image of clay or stone constituted the juristic person. The Smriti writers have laid down that if an image is broken or lost another may be substituted in its place; when so substituted it is not a new personality but the same deity and properties vested in the lost or mutilated *thakur* become vested in the substituted *thakur*. Thus a dedication to an idol is really a dedication to the deity who is ever present and ever existent, the idol being no more than the visible image through which the deity is supposed specially to manifest itself by reason of the ceremony of consecration.

CENTRAL LIBRARY

The decision in Bhupati Smrititirtha V. Ramlal (m) has been followed by other High Courts in India, and it has been held by the Allahabad High Court in Mohor Singh V. Het Singh (n) that a bequest to complete the building of a temple which was commenced by the testator and to install and maintain an idol therein was a valid bequest under the Hindu law. The fact that the gift is made by a deed inter-vivos and not by a will does not make any difference. A donor can certainly create a trust for the worship of an idol which is to be consecrated and established in future (o). The same principle applies if the deity is such as is worshipped periodically like Durga and has got no permanent image. The dedication of property for carrying on such periodical worship is perfectly valid, although every year a new clay image is to be prepared which is thrown into the river after the Puja is over (p). But although the image of the deity need not be in existence at the date of dedication, it is necessary that the donor should indicate with sufficient certainty the particular deity for the worship of which the property is dedicated. The endowment, it is said, must be in favour of one of the gods of the Hindu pantheon who is to be mentioned by name. A deed of dedication which does not mention the name of any god but is expressed to be for impersonal God has been held to be invalid. In Phundan Lal V. Arya Pratinidhi Sabha (q) it was held that a dedication not to any particular deity which was subsequently to be installed but to "Thakurji" in his 'Thakurdwara' without mentioning the particular Thakurji to whom the property was dedicated was void for uncertainty. Similarly a gift of property to a grantee for the seva of 'God' was pronounced to be invalid by the Calcutta High Court (r). When the intention of the donor is to endow a particular idol, and no name or description of the idol is given, the gift may fail for uncertainty, but

Deity must be named.

(m) 37 Cal. 128 (F. B.).
(n) 32 All. 337.
(o) Chaturbhuj V. Chatrajit—33 All. 253.
(p) Asita Mohan V. Nirode Mohan—20 C. W. N. 901 ; Purna Chandra V. Kalipada—A. I. R. 1942 Cal. 386.
(q) 33 All. 793.
(r) Chandi Charan V. Haribole—46 Cal. 951.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

I doubt very much whether a gift should fail, when the donor clearly intended there that it was meant for the formless or impersonal God. In Hindu scriptures there are ample provisions for the worship of the formless and absolute Brahman and no question of uncertainty arises in such cases. Where the name of the deity though not clearly specified can be ascertained from the description given in the deed, the gift cannot possibly fail. In Bankey Lal V. Peare Lal (s), the gift was to Sri Ramchandraji Maharaj the god of the two worlds. It was held that the dedication was valid as Ramchandraji Maharaj is worshipped as an incarnation of Vishnu. The expression "the god of the two worlds" was used by way of adoration and did not mean that the gift was to the impersonal deity.

The other matters relating to the nature of the Debutter Endowment can be conveniently discussed under the three following heads :-

A. Whether the Debutter is real or nominal ?
B. Whether it is absolute or partial ?
C. Whether it is public or private ?

I will take up these three matters one after another.

Real and nominal Debutter.

As regards the first question, I have stated already that in order that there may be a real dedication to a deity, it is necessary to show that the grantor intended to divest and did divest himself completely of every part of the property which was the subject matter of the grant, and the dedication was not a mere colourable device to tie up the property for the benefit of the donor's heirs or other relations. The forms and ceremonies employed by the grantor are only relevant to show what his intention was, and even if the customary ceremonies of *Sankalpa* and *Sampradana* were gone through that would not be conclusive to prove that the endowment was a real one. The execution or registration of a deed of Arpannama is by itself not sufficient to show real and *bona fide* dedication (t) ; the conduct of the grantor and the surrounding circumstances have to be taken into account in order to determine whether the donor intended the deed to

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(s) 53 All. 710.
(t) Watson V. Ram Chand—18 Cal. 10 ; Thakurji V. Sukhdeo 42 All. 295 (F. B.).

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

be real and operative. To complete the gift there must be transfer of the apparent evidences of ownership from the donor to the donee (u). The tests of a *bona fide* endowment generally are, how have the founder and his descendants treated the endowed property and whether the income has been continuously applied to the objects of dedication (v). The subsequent acts and conduct of the parties are relevant only for the purpose of ascertaining what the original intention of the grantor was. Thus if the profits of a dedicated property are appropriated by the executant for his own use and not spent for the worship of the idol and his subsequent dealings with the property show that he did not intend to create an endowment, the dedication will be held to be inoperative (w). But once the intention to dedicate is established the subsequent acts and conduct of the trustees even if they amount to breaches of trust would not invalidate the endowment. As the Privy Council pointed out in Juggut Mohini V. Sookheemony (x) a mere abuse of trust by a trustee for the time being cannot affect the validity of the endowment when there is no question about its being real and valid endowment originally ; but when the question itself is whether originally the endowment was real or fictitious the way in which it was dealt with by the founder and his successors would be the essential matters for consideration. The legal position has thus been summed up by Banerjee, J. in Ramchandra V. Ranjit (y). "In dealing with the question whether an endowment is real or nominal the manner in which the dedicated property is held and enjoyed is the most important point for consideration. A mere abuse of trust by a trustee for the time being cannot affect the validity of an endowment where there is no question about its being originally a real and valid endowment, but when the question is whether an endowment is real or fictitious the mode of dealing

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(u) Ramdhan V. Prayag Narain—43 All. 503.
(v) Ganga Narain V. Brindaban—3 W. R. 142 ; Madhab V. Sm. Rani Sarat Kumari—15 C. W. N. 126
(w) Sri Iswar Lakhmi Janardan V. Khitish Chandra—55 C. L. J. 25.
(x) 14 M. I. A. 289.
(y) 27 Cal. 242.

CENTRAL LIBRARY

with it by the donor and his successor must be an important matter for consideration." In Girijanand V. Sailajanand (z), it was held that when the question to be determined is whether certain property is Debutter or trust property or belongs to the alleged trustee in his own right, instances of appropriation of such property by the alleged trustee to his own use, if they are numerous and extend far back into the past in a continuous series will be good evidence of his right ; but if the instances are only recent or are few and far between, they are not likely to be of much use and may be treated as instances of abuse of trust.

The question whether the Debutter is real or fictitious arises both when a deed of dedication is put forward in proof of the endowment, and also where there is no grant or any other document showing its origin. When there is a document which purports to create the Debutter, it may still be proved as has been said just now, that the deed is benami or fictitious and was not meant to be acted upon. If however the founder's intention to dedicate is established and divestiture of interest is contemporaneous nothing further need be proved (a). The endowment would be perfectly valid even if there are subsequent acts of misappropriation or abuse of trust by the trustees. There are instances however, as I shall discuss presently, where the deed of endowment itself shows that no real dedication was meant for the deity or even if there was dedication it was not of the entire interest of the founder. Where there is no deed, no question of construction arises, and the validity or otherwise of the endowment would have to be determined entirely on circumstantial evidence.

To illustrate how these principles have been applied to concrete cases, it would be proper to refer to some of the decided authorities. In Watson V. Ram Chand (b), two deeds of endowment had been executed by one Pudmalochan but ever since the execution of the deed, until after the death of Pudmalochan, no change took place in the accounts, or in the manage-

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(z) 23 Cal. 645.
(a) Singh Sanatan V. Singh Rajput—65 I.A. 106.
(b) 18 Cal. 10.

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ment or dealings with the business or estate or the proceeds thereof. Everything appeared to have been done in the same manner as if the deeds were not executed. Their Lordships of the Judicial Committee in these circumstances pronounced the deeds to be fictitious and inoperative. In Ganga Narain V. Brindaban (c) there was an endowment made by one Doorgaram of which he constituted himself the Shebait. Within fifteen days of the date of endowment, Doorgaram transferred to his brother half of the endowed property. Although there was no other instance of transfer no attempt was made to prove that the income of the so-called endowed lands had been continuously devoted to the service of the idol. It was held that the endowment was a nominal one. In Sri Thakurji V. Sukhdeo (d) there was a deed of endowment by which the entire property of the founder was sought to be dedicated to a deity. There was no mutation of the name of the idol and it was further proved that expenditure on the idol was at the most one-tenth of the total income. It was held that there was no intention to dedicate. Similarly in Sri Thakur Parmod V. Atkins (e) where the alleged dedicated property was allowed to stand as secular property in the Land Registration Department, and the mode of dealing with the property by the parties interested showed that they still regarded the property as belonging to the estate, the decision of the court was that the original endowment was inoperative and the trust in favour of the idol was never brought into existence. If it is proved that the settlor was heavily in debt when the deed of dedication was executed, that would obviously be a material circumstance in determining the question whether the deed was real or fictitious (f). In Madhab Chandra V. Rani Sarat Kumari (g) the events showed that the deed of endowment was intended to be acted upon and was not a benami deed. There were instances however of unlawful diversion of

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(c) 3 W.R. 142.
(d) 42 All. 295 (F.B.).
(e) 4 P.L.J. 537.
(f) Ram V. Ranjit—4 C.W.N. 405; Sri Sri Kalimata V. Nagendra 44 C.L.J. 522.
(g) 15 C.W.N. 126.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

property from the services of the idol to other purposes, in later years. It was held that these were immaterial and did not affect the Debutter.

Even when a deed of dedication is not fictitious or benami the provisions of the deed might show that the benefit intended for the deity was very small or of a nominal character. If the gift to the deity is wholly illusory there is no Debutter in the eye of law, but there are cases where a question arises on the construction of the document itself, whether the endowment created was only a partial one meaning thereby that the dedicated property did not actually vest in the idol, but the latter enjoyed a charge upon the secular property of the founder, given to his heir or other relations, for the expenses of its worship. I will discuss this matter separately under the second head. I may only state here that where there is an out and out dedication to an idol, the reservation of a moderate portion of the income of the endowed estate for the remuneration of the Shebait would not invalidate the endowment either as a whole or to the extent of the income so reserved. In Jadu Nath V. Thakur Sitaramji (h) there was a dedication of the entire property of the founder to the idol, and the direction given was that half of the income was to be applied for the worship of the idol and repairs of the temple, and the other half was to go for the upkeep of the managers. Their Lordships of the Judicial Committee in holding the gift as a valid Debutter observed as follows :—

'The deed ought to be read just as it appears, and there is no reason why it should not be so construed as meaning simply what the language says, a gift for the maintenance of the idol and the temple, under which the idol is to take the property, and for the rest, the family are to be the administrators and managers and to be remunerated with half the income of the property. If the income of the property had been large a question might have been raised, in the circumstances as throwing some doubt upon the integrity of the settlor's intentions, but as the entire income is only 800 rupees a year, it is

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(h) 44 I. A. 187.

CENTRAL LIBRARY

obvious that the payment to these ladies is of the most trifling kind and certainly not an amount which one could expect in a case of this kind".

Following this decision it was held by the Calcutta High Court in Chandi V. Dulal (i) that a provision for remuneration of the Shebaits with half of the income of the Debutter property (which proved to be a small sum) as well as for their residence in the Thakurbari were quite compatible with an absolute endowment. You should bear in mind in this connection, that when a property is absolutely dedicated to a deity, it is not necessary that every farthing of the income should be spent for the worship of the idol itself. It is quite within the competence of a settlor to provide that the surplus income should be spent for other charitable objects e.g. feeding of the poor. Sadavart or entertainment of pilgrims and guests is often found to be an adjunct of a public Debutter. In the case of Monohar Mukherji V. Bhupendra Nath Mukherjee (j) there was a provision in the deed of dedication that the surplus income of the endowment should be spent upon maintenance of childless widows of the family and construction of roads and excavation of tanks for public use, and these directions, it was held, did not make the dedication incomplete.

The existence of any document, as has been said already, is not necessary to prove a Debutter, but the absence of a document throws a heavy onus upon the party who sets up dedication to prove that a property has been inalienably conferred upon an idol (k). The purchase of property in the name of an idol, where the purchase money does not come from funds appropriated to the use of the idol, is not tantamount to a dedication of the property to the idol ; it may be a benami or fictitious transaction (l).

The description of property as Debutter not conclusive.

The fact that a property is ordinarily described as Debutter is certainly a piece of evidence in favour of dedication, but not conclusive. In Binod Behari V. Manmatha (m) Cox, J. observed as follows :-

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(i) 30 C. W. N. 930.
(j) 37 C. W. N. 29 (F. B.).
(k) Konwar Doorga Nath V. Ram Chand—4 I.A. 52 ; Muddun V. Sm. Kamal Bibee—8 W.R. 42.
(l) Brojo Soondory V. Ranee Lachmee—11 W.R. 13 affirmed by the P.C. 20 W.R. 95.
(m) 21 C.L.J. 42.

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"The fact that the property is called Debutter is doubtless evidence in the palintiffs' favour but it does not relieve them of the whole burden of proving that the land was dedicated and is inalienable."

Evidentiary value of Rubkaries in resumption proceedings.

Rubkaries or decisions of Revenue auhorities in resumption proceedings under Regulation II of 1819 also constitute relevant evidence which may be adduced in support of or against dedication. The question for decision by Revenue officers in resumption proceedings undoubtedly is whether any *lakhraj* grant has been established which would preclude the Government from assessing the lands to revenue. It was held in an early case (n) that even if the claimant failed to prove any valid rent free grant and the lands were assessed to revenue, that by itself would not destroy any trust which existed prior to settlement proceedings. Similarly it was held that the mere fact of the land having been released by Government on the ground of its having been appropriated to the services of an idol does not impose on it the character of a religious endowment so as to exempt it permanently from being attached and sold in satisfaction of a decree against a person who may hold it (o). This last decision was followed in subsequent cases of the Calcutta High Court *e.g.* Gobind V. Debendra (p) and Budh Singh V. Nirod (q). In Budh Singh V. Nirod Baran, Mr. Justice Mookerjee went to the length of saying that "the question whether the lands had been absolutely dedicated for a public charitable purpose was wholly foreign to an enquiry in the resumption proceedings, and indeed beyond the jurisdiction of revenue authorities ; all that they had to investigate under Regulation II of 1819 was whether the lands ought to be exempted from the assessment of revenue on the ground that they constituted a valid rent free grant." I think that the observation goes a little too far and the correct view was enunciated by Brett and Sharfuddin JJ. in Madhab Chandra V. Rani Sarat Kumari (r). After referring to the above passage in the judg-

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(n) Rajah Leelanand V. Ishuree Nundan—8 W.R. 316.
(o) Nemayee Charan V. Jogendra—21 W.R. 365.
(p) 12 C.W.N. 98.
(q) 2 C.L. J. 431.
(r) 15 C.W.N. 126.

CENTRAL LIBRARY

ment of Mookerjee, J. in Budh Singh V. Nirod Baran, the learned Judges observed as follows :-

"We are in entire agreement with the learned Judge's conclusion that in proceedings under Regulation II of 1819 there could be no final adjudication of the question whether lands had been so dedicated as to constitute a public charitable endowment, but we think the passage goes too far when it lays down that the question was wholly foreign to the enquiry in the resumption proceedings. We are of opinion that it would certainly be open to an officer acting under that Regulation to enquire into the grounds set forward in support of a rent free grant claimed, and when these grounds are based on the allegation that the lands had been dedicated for a public charitable purpose, then it would be necessary for such officer for the purpose of arriving at a conclusion as to whether or not there was a valid rent free grant to take into consideration and decide incidentally the question whether there had been a dedication for a charitable purpose. Such an incidental decision would not amount to final determination of the question nor could it be relied upon for such a purpose".

The fact that a claim was put forward by the Shebait that the property was Debutter, and the claim was admitted by the Revenue authorities for purposes of releasing the property from Government revenue would certainly make the Rubkaries evidence under section 13 of the Indian Evidence Act. They could not by any means be regarded as conclusive, but they should be weighed and appraised for what they are worth along with other evidence in the case.

Entries in Settlement Records—how far relevant to prove Debutter.

Entries in Settlement records prepared under Chapter X of the Bengal Tenancy Act have a greater evidentiary value ; they carry a presumption of their correctness under section 103 (B) of the Act. If lands are recorded as *lakhraj* Debutter property in the Settlement Records, a presumption of dedication would arise, and it would be for the party who denies the Debutter to rebut the presumption (s). The mere fact

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(s) Ronald Duncan Cromartic V. Sri Sri Iswar Radha Damodar—62 C.L.J. 40.

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that the proceeds of any land were used for the support of an idol may not by itself establish Debutter, for it is well known that worship of family deities may be and sometimes are carried on with the income of specific property belonging to the family. But such fact may, in certain circumstances, have an important bearing in determining whether the property is Debutter or not (t). In Ram Pershad Das V. Sreehuree (u) the court refused to draw an inference of endowment from the fact that a portion of the proceeds of the land in possession of the defendant had been for sometime used for the worship of an idol. When however account papers were produced showing that rents were separately collected and applied for the worship of the idol, or where there is apparently good evidence going back for more than half a century that land was given for the support of an idol, proof that from time to time the proceeds of the land had been so expended would be strong corroborative evidence of Debutter (v).

As has been said already the purchase of a property in the name of a deity is not *per se* **evidence** of dedication. When however it is proved that the person who advanced the money described himself as Dharmakarta or Shebait in the document that would be a good evidence of dedication. The employment of priests or Archakas or the performance of worship in accordance with the rites of the sect for whose benefit the endowment is alleged to be made also constitutes material evidence in support of dedication (w). Hearsay evidence which is excluded by the Indian Evidence Act is not admissible to prove Debutter. In Maharaja Srish Chandra V. Rakhalanandan (x) evidence was given of a tradition in the plaintiffs' family that an ancestor of the defendant had established two deities and granted the plaintiffs an annuity in perpetuity for their worship charged upon the grantor's estate. The High Court relied

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(t) Sri Sri Gopal Jew V. Radha Binod—41 C.L.J. 396.
(u) 18 W.R. 399.
(v) Muddan Lal V. Sm. Kumal Bibee—8 W.R. C.R. 42 ; Abhiram V. Shama Charan—36 Cal. 403.
(w) Peesapati V. Kandur—18 M.L.T. 543 ; Konwar Doorga V. Ram Chandra—2 Cal. 341 ; Mohan Lal Ji V. Gordhan Lal Ji—40 I.A. 97.
(x) o45 C. W. N. 35 P.C.; (1941) 1 Cal. 468.

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upon these hearsay statements and decided in favour of the plaintiffs. On appeal to the Judicial Committee the judgment was set aside and their Lordships held that the evidence of the tradition being hearsay evidence which was excluded by the Evidence Act could not be taken into consideration.

Absolute & partial Debutter.

Where the dedication made by a settlor in favour of an idol covers the entire beneficial interest which he had in the property, the Debutter is an absolute or complete Debutter. Where however some proprietary or pecuniary right or interest in the property is either undisposed of or is reserved for the settlor's family or relations, a case of partial dedication arises. In a partial dedication the deity does not become the owner of the dedicated property but is in the position of a charge holder in respect to the same. A charge is credited on the property and there is an obligation on the holder to apply a portion of the income for the religious purposes indicated by the settlor. The property does not become extra-commercium like Deubtter property, strictly speaking so called, but is alienable subject to the charge and descends according to the ordinary rules of inheritance. It can be attached and sold in execution of a decree against the holder. Whoever gets the property however takes it burdened with the charge or religious trust.

As has been stated above, a dedication does not lose its absolute character simply because there is in the Arpannama a provision for remuneration of the Shebaits in a reasonable manner or for their residence in the dwelling house which is dedicated to the deity. This would be as the Privy Council says a gift to the deity *sub modo* (y). A personal though not a heritable privilege may also be created in favour of specified members of the settlor's family to reside in the house provided for the Thakur or the Shebait. This would not affect the absolute character of the grant (z).

But it happens in some cases that the property dedicated is very large and the religious ceremonies

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(y) Jadunath V. Thakur Sitaram—44 I.A. 187.
(z) Bhuggobutty Prosanna V. Gooroo Prosanna—25 Cal. 112.

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which are expressly prescribed by the founder cannot and do not exhaust the entire income. In such cases some portion of the beneficial interest may be construed as undisposed of and cannot but vest as secular property in the heirs of the founder. There are cases again where although the document purports, on the face of it, to be an out and out dedication of the entire property to the deity, yet a scrutiny of the actual provisions reveals the fact that the donor did not intend to give the entire interest to the deity, but reserved some portion of the property or its profits for the benefit of his family relations. In all such cases the Deubtter is partial and incomplete and the dedicated property does not vest in the deity as a juridical person. It remains with the grantees or secular heirs of the founder subject to a trust or charge for the religious uses. The earliest pronouncement of the law on the subject is to be found in the decision of the Judicial Committee in Sonatun Bysack V. Juggutsoondaree (a) which was followed and applied in the subsequent case of Ashutosh V. Durga (b). In Sonatun Bysack V. Juggut soondaree (a), A Hindu by will gave all his property, movable and immovable, to the family idol ; and after stating that he had four sons, he directed that his property should never be divided and the sons and grandsons in succession would enjoy "the surplus proceeds only". One of the sons was appointed a manager to attend to the festivals and ceremonies of the idol and maintain the family, and the further direction was that the surplus which would remain after deducting the expenditure should be added to the corpus. In the event of a disagreement between the sons and family, the nett produce and surplus should be divided annually in certain proportions among the members of the family. It was held by their Lordships of the Judicial Committee that the bequest to the idol was not an absolute gift. "A reference to the second, third and fifth clauses of the will" so runs the judgment "leads us to the conclusion that although the will purports to begin with an absolute gift in favour of the idol, it is plain

Partial Debutter may arise where the religious ceremonies prescribed by the founder do not exhaust the entire income of the dedicated property, or the entire beneficial interest was not intended to be conveyed to the deity.

(a) 8 M.I.A. 66.
(b) 6 I.A. 182.

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that the testator contemplated that there was to be some distribution of the property according as events might turn out ; and that he did not intend to give the property absolutely to the idol seems to their Lordships to be clear from the directions which are contained in the third clause, that after the expenses of the idol are paid, the surplus shall be accumulated ; and still more so from the fifth clause by which the testator has provided for whatever surplus should remain out of the interest of the property, the expenses of the idol being first deducted. It is plain that the testator looking at the expenses of the idol was not contemplating an absolute and entire gift in favour of the idol." On a construction of the entire will it was held that there was a gift to the four sons of the testator and their offspring in the male line as a joint family, and the four sons were entitled to the surplus of the property after providing for the performance of the ceremonies and festivals of the idol and the provisions in the will for maintenance.

In the other case of Ashutosh V. Doorga (c), the testatrix also purported to dedicate a property standing in her name to deity Raj Rajeswar. After reciting various religious acts and ceremonies, the expenses of which were to be met from the income of the property, the testatrix directed that after all these acts have been observed from the proceeds of the said property, if there be a surplus then the family will be supported therefrom and further "that this property of mine will not be liable for the debt of any person. None will be able to transfer it". It was held by their Lordships of the Judicial Committee that the property was not wholly Debutter. "They consider that it created a charge upon the property for the expenses of the daily worship of the idol as it was performed at the time of the death of the testatrix and of the Poojas, Sradhs and religious ceremonies for which provision is made by the will. For the purpose of this decision the charge may be termed generally a charge for such religious acts and ceremonies. So far the case falls within the class of which that of Sonatun Bysack V. Juggotsoondaree

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(c) 6 I.A. 182.

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(d) may be referred to as an example". The principles enunciated in these decisions have been followed in various cases both by the Judicial Committee as well as the High Courts in India. As the Privy Council pointed out in Pande Har Narayan V. Surja Kunwari (e) no fixed and absolute rule can be set up derived alone from the use of particular terms in one part of the document. "The question whether the idol itself shall be considered beneficiary, subject to a charge in favour of the heirs or specified relatives of the testator for their upkeep, or that, on the other hand, these heirs shall be considered the true beneficiaries of the property, subject to a charge for the upkeep, worship and expenses of the idol, is a question which can only be settled by a conspectus of the entire provisions of the will". In this case the will provided that the property of the testator should be considered to be the property of the idol, but there was further provision, that the residue after defraying the expenses of the temples "shall be used by our legal heirs to meet their own expenses". It was held that this provision together with other circumstances, such as that the ceremonies to be performed which were fixed by the will would absorb only a small portion of the total income would indicate that the intention of the testator was that the heirs should take the property subject to a charge for the performance of the religious purposes named. Where the settlor prescribes the religious observances that are to be performed in connection with the idol, but there is nothing to indicate that the ceremonies and expenditure should increase with the growing income yielded by the properties, the excess income will not be covered by the grant. In Surendra Krishna Roy V. Shri Shri Iswar Bhubaneswari Thakurani (f) the deed of endowment which was created in favour of the family idol covered a large number of properties. It purported to dedicate to the deity absolutely the *Thakurbari* and another house which was intended for the residene of the Shebait. With regard to the rest of the

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(d) 8 M.I.A. 66.
(e) 48 I.A. 143 ; 25 C.W.N. 961.
(f) 60 Cal. 54.

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property the provision was that the Debutter expenses should be carried on as before with their income and that the surplus should be invested in erecting masonry dwelling houses for the residence of the donor's family and also for letting out some of these houses for the purpose of increasing the income. It was held by Rankin, C. J. that with the exception of the Thakurbari and the Shebait's house, the rest of the properties were not absolutely dedicated to the idol, the ultimate benefit being for persons other than the family deity ; such dedication created a charge on the endowed property for the expenses of the worship of the deity. This decision was affirmed in appeal by the Judicial Committee (g). Lord Macmillan, who delivered the judgment of the Privy Council after referring to the decision of the High Court regarding the two properties which were held to be absolutely dedicated, observed as follows :—

"But different considerations apply with regard to the remaining properties comprised in the deed of dedication and deed of sale. In the first place throughout the deed of dedication the observances prescribed are repeatedly referred to as those originally in use to be performed, and their Lordships agree with the learned Chief Justice that on a fair reading of the deed as a whole it was not intended that the ceremonies and expenditure should increase indefinitely with the growing income yielded by these properties : see Surendra Keshav Roy V. Doorga Soondaree Dassee (h). From the nature and situation of the properties and the directions given for their development it must have been clearly contemplated that the income derived from them would be a growing one and must exceed the expenditure requir-ed for the prescribed ceremonies and charities..... In these circumstances, the directions as to the disposal of the surplus income became of much importance. Now the clause dealing with the ultimate surplus directs that it shall be applied in the building of additional premises 'for the convenience of residence and habitation of heirs'. This destination, it will be

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(g) See Iswar Bhubaneswari Thakurani V. Brojo Nath De—64 I.A. 203.

(h) 19 I.A. 108, 127, 128.

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observed, is not in favour of the Shebaits, but is really in substance a gift in favour of the settlor's heirs generally."

In Annada Charan Dutt V. Kamala Sundari (i) the testator dedicated all his properties to his family deity and directed that out of the profits of the said property the manager shall maintain the deity and the surplus profits would be divided between his wife and sons. The court had no difficulty in holding that it was not a case of absolute Debutter and the religious expenses constituted a charge upon the estate.

Direction for accumulation of surplus is not necessarily an indication of partial Debutter.

A mere direction to accumulate the surplus income of the Debutter estate for the purpose of augmenting the corpus would not make the dedication partial if the entire interest is given for religious purposes and no portion of the income is meant for the heirs (j).

Gift to heirs not *qua* Shebaits is such indication.

As has been said above, a provision for giving a reasonable remuneration to the Shebaits out of the income of the Debutter property would not make the dedication incomplete. But when the gift is not to the Shebait as such but to the heirs of the founder the dedication is not complete, even though the heirs are enjoined to assist in the performance of the religious duties. This is what happened in Akhil Chandra V. Rebati Raman (k). There a testator purported to dedicate by a will all his properties to a deity and directed that after deducting the charges for management and Government revenue one fourth of the profits should be devoted to the worship of the deity and the annual ceremonies, one-fourth to the repair of the houses of the deity and other houses, and the remaining moiety his heirs shall get according to the Dharmasastras from the manager "for the purpose of rendering help in the Seba of the deity". The further direction was that any of his heirs would be able to obtain from the manager his portion of the profits mentioned above as the "Prasad" of the Thakur. It was held upon a construction of the will that a gift of a moiety of the property or income through the hands of the manager was equivalent to a gift of a

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(i) A.I.R. 1936 Cal. 405.
(j) Sorojini V. Jnanendra—23 C.L.J. 241.
(k) 14 C.L.J. 618.

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moiety of the corpus to his heirs, and they took the beneficial interest in such moiety, and that the words "for the purpose of rendering help in the Seba of the deity" imposed no condition but merely stated a purpose or object which the heirs might observe or neglect as they felt inclined.

It is difficult to enumerate exhaustively the various kinds of qualified or partial dedication that might arise on the construction of particular documents, and their Lordships of the Judicial Committee rightly pointed out that they may not be quite so simple as those which are already covered by decided authorities (l). Where there is no gift of any property to the deity and it is directed that the worship of the idol would be carried on out of the income of the property which is given to a relative of the grantor no difficulty arises ; the Debutter expenses in such cases would only constitute a charge upon the property. Sometimes the grant is in favour of the Shebait himself who is entrusted with the duty of maintaining the worship of the deity. The language of the document in such cases often makes it difficult to decide whether the grantee is the idol or the Shebait personally. In cases of ambiguity the court may determine the true character of the endowment from the manner in which the dedicated properties had been held and enjoyed. In Kulada Prosad Deghoria V. Kali Das Naik (m) there were two ancient grants by one of the Maharajas of Pachete, by which the properties were given to the grantee who was to enjoy them from generation to generation on performance of the Seba of the goddess. In 1829 the successors of the grantee granted two permanent leases to the predecessor-in-interest of the plaintiff. It was proved at the time of the trial that the original grantee and his successors throughout held and enjoyed the properties as secular properties subject to a religious charge and that while a part of the income had been applied for the worship of the goddess, the remainder was used by the members of the family for their own purposes. In these circumstances, it was held by the Court below—and in this

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(l) Vide Maharaja Jagadindra V. Rani Hemanta—31 I.A. 203.
(m) 42 Cal. 536.

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view the High Court concurred—that the properties were not absolute Debutter properties but were personal properties of the Dighorias subject to the charge of the worship of the goddess.

The same question arose in Bidhusekhar Banerji V. Kulada Prosad Dighoria (n), where also the Dighorias were grantees, and the original Sanads were not very clear. Fletcher, J. in delivering judgment observed as follows :

"Having gone through the *Sanads* I come to the conclusion that the language used in these ancient documents is in every case ambiguous. Whether the grantor intended to make an out and out grant in favour of the Shebait, subject only to the maintenance of the worship of the deity or whether the grant was made wholly for the benefit of the idol seems to be a matter on which there is good deal to say. But the subsequent conduct of the parties in this case is not open to doubt".

On a consideration of the subsequent conduct it was held that there was no complete Debutter, and that the properties were granted to the Shebaits subject to a charge for maintaining the worship of the Thakur. In this connection I would refer you to the decision of the Patna High Court in Bhekdhari Singh V. Sri Ram Chandra Ji (o), the reasoning in which I feel some difficulty in following. The learned Judges who decided the case held on a proper construction of the document that the property was dedicated in its entirety charged with the maintenance of the settlor's family, but on reference to the subsequent conduct of the parties it was held that as the donor did not effect registration of the names of the deities in substitution of his own name and the income was not devoted to the object set forth in the deed, all that the settlor intended by the deed was the creation of a charge on the property for the services and worship of the deities therein mentioned and not an out and out dedication. With all respect to the learned Judges it may be pointed out that on the facts of this case only two conclusions were possible. The document on the face of it created an out and out

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(n) 46 Cal. 877.
(o) 10 Pat. 388.

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dedication, and the learned Judges held definitely that there was no ambiguity in its terms. If on the evidence adduced the Judges were satisfied that the settlor had no intention of giving effect to the document, there could be no Debutter at all, either absolute or qualified. If on the other hand the intention was not to create a benami or fictitious deed, the subsequent uses of the property, when the terms of the deed are not ambiguous, are hardly relevant in law. We cannot on the evidence of subsequent user of the property cut down the terms of an unambiguous deed.

In Gopal Lal Sett V. Purna Chandra Bysack (p) the will of a Hindu testatrix was adressed to her grandson, and provided that out of the income of the specified property he should perform the worship of certain family idols and that he should be the person in charge of worship. The will contained no gift, either express or implied to the idols. Their Lordships of the Judicial Committee construed the will as conferring the property upon the grandson of the testatrix to whom the will was addressed and who would take the property burdened with the religious duties cast upon him. When the Debutter is not complete and a charge is created for religious purposes upon secular property it is open to the holder of the property to ask the court for a direction that the charge should be confined to a specified portion of the property, the income of which would be sufficient to meet the expenses, and the rest of the property would be held free and clear of the charge. I may conclude this part of the discussion by saying that the question of incomplete or partial dedication may not only arise when the property is given to a deity, it may arise also in other forms of religious or charitable trust where there is dedication of property for religious or charitable uses as are recognised by Hindu law. In the case of Hemanta Kumari V. Gouri Shankar (q) there was dedication of a bathing ghat on the banks of the Ganges at Banaras for the use of the pilgrims. The object was both religious and of public utility, and the question was whether the holder had divested

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(p) 49 I.A. 100.
(q) I.L.R. 1941 A. 401 (P.C.).

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himself completely of his ownership in the property dedicated or that he still retained his ownership and merely granted to the community a right in the nature of an easement for certain specific purposes. It transpired in evidence that the founder had purchased a portion of the river bank at Banaras where there was previously a bathing ghat and he had built masonry steps thereon and allowed the ghat to be used by the public for bathing purposes. There was, however, no express dedication ; no manager had been appointed and the founder and his heirs looked after and repaired the ghat at their own expense, purporting to act not as managers but as owners and they collected tolls from shopkeepers at festivals, although their expenditure exceeded the receipts. In these circumstances, it was held by the Privy Council that there was no complete dedication in the sense of cessation of the ownership on the part of the founder and that there was only a partial grant in favour of the religious or charitable object.

Private and Public Debutter.

A Debutter like any other endowment may be public or private. In English law, as I have explained in an earlier lecture, a distinction is recognised between private and public trusts, but charitable trusts in English law are synonymous with public trusts, and a charity in the strict sense of the English language can never be private. By public trusts it must be understood such as are constituted for the benefit either of the public at large, or of some considerable portion of it, answering a particular description, while private trusts concern only individuals or families. A private trust providing for the material or spiritual benefit of individuals and families could not rank as a charitable trust in English law which must be public in its character. In Hindu law however, it is competent for a donor to create a religious trust, the benefit of which is confined to the members of a particular family or the disciples of a particular religious preceptor. So far as Debutter endowment is concerned the essential test to distinguish a private from a public place of worship is, whether the right of worshipping the idol is limited to the members of a particular family or group or extends to all persons professing the Hindu religion. Rules can certainly be framed by those in charge of a public temple to ensure

CENTRAL LIBRARY

good order and decency of worship and to prevent over-crowding at the temple, but subject to these rules the right of entrance into a public temple for purposes of worship is a free right which cannot be prohibited or sold (r). As Scott, J. pointed out in Thakersey Dewraja V. Hurbhum Nursey (s) 'the good conduct condition is imposed on all votaries in every place of worship but it does not make the temple a private one.' The distinction between public and private Debutter, involves, as we shall see presently, important legal consequences. The question frequently comes up before our courts of law, and several circumstances have been held by Judges to be material for the purpose of determining the question. When the donor has expressed his intention of dedicating the temple to the public by a document or otherwise, no difficulty arises. In cases where no express dedication is proved, the character of the endowment must always be a legal inference from proved facts. As in the case of highways, long user is undoubtedly a material element from which an inference of dedication may arise. If the public have been in the habit of worshipping in the temples in an open and unconcealed manner, for a long period of time, and were never denied any access to it, that would be a strong evidence of dedication (t). With regard to period of user, no hard and fast rule has been laid down. "There is no minimum which must be fulfilled, and there is no maximum which compels the inference". Each case would depend upon its own circumstances. Besides user by the public, conduct of the founder and his descendants is also relevant, and if they in fact held out the temple to be a public temple, a very strong presumption of dedication would arise. It is found in many cases that repairs and additions to the temple building are made with public subscriptions and that festivals in the temple are also performed with the aid of public funds. These facts certainly fortify the inference of the temple being a public one. In Pujari Lakshsmana Goundan V. Subramaniya (u)

Material tests for determining the public or private character of a temple.

(r) See Kali Das Jiram V. Gorv Parjaram—15 Bom. 309
(s) 8 Bom. 432.
(t) Thakersey V. Hurbham—8 Bom. 432.
(u) 29 C.W.N. 112 (P.C.).

CENTRAL LIBRARY

the question for decision was whether a Hindu temple founded between 1841 and 1856 in the District of Salem in the Madras Presidency was or was not dedicated by the founder to the public. There was no deed of dedication and it was not taken charge of by the Board of Revenue under the Madras Regulation of 1817. It was proved that the founder Lakhsmana Goundan installed the idol at his house, and allowed Brahmins and other Hindus of various castes to worship the idol as if it was a public one. "On certain days in each week the Hindu public was admitted by him, free of charge, to worship in the greater part of the temple, to one part only on payment of fees, and to the inner shrine apparently not at all. With the income which he derived from offerings and fees at the temple he efficiently maintained the temple as if it were a public temple and discharged all the expenses connected with the temple and the worship of the idol .....". On those facts their Lordships held that they could come to no other conclusion than that Lakshmana Goundan held out and represented to the Hindu public that the temple was a public temple at which all Hindus might worship and the inference is that he had dedicated the temple to the public. The inference of dedication was in this case based substantially on the principle of estoppel. The owner having held out to the public that the temple was a public one, and allowed them to exercise their rights of worship on that footing was estopped from denying that it was a private or proprietary temple.

In Hari Kishan V. Raghubar Dayal (v) it was proved that not only the public used the temple without any hindrance or obstruction by the founder or his descendants, but that repairs of and additions to the building appurtenant to the temple were made at public costs, and the festivals were performed by raising public subscriptions. These facts sufficiently indicated the temple to be a public one. When a temple has a *Sadavart* or *Dharamsala* attached to it which is open to the Hindu public, it is a circumstance in favour of the temple being a public one. In Jagatkishore V. Lakhman Das (w) a Hindu built a temple

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(v) A.I.R. 1926 Oudh 578.
(w) 23 Bom. 659.

CENTRAL LIBRARY

in favour of the deity Shri Pandurang to which were attached a *Dharamsala* and a *Sadavart* for feeding travellers and giving alms to the poor. It was proved that a certain number of the public had always used the temple, and that the surplus fund not required for the service of the idol was applied to feeding travellers and maintaining the *Sadavart*. It was held from these facts that the intention of the founder was to dedicate the property to public religious and charitable purposes. When however an endowment is made for a family deity, a provision in the deed of *Arpannama* for feeding of the poor and of students, in case the income of the property increased would be construed as incidental to the main purpose of the endowment and such trust would be wholly of a private nature (x). It was observed by Srinivas Ayyanger, J. in Peesapati V. Kanduri (y) that "it is very unusual for a Hindu in southern India to construct a temple outside his dwelling house for private worship". The fact that the temple is outside the dwelling house is therefore a circumstance in favour of it being regarded a public temple. It may be noted that in the Madras Presidency private temples are practically unknown, and it was held by their Lordships of the Judicial Committee in Mundancheri V. Achutan Nair (z) that in the Presidency of Madras the presumption is that temples and their endowments form public religious trust, though in Malabar there is no presumption either one way or the other. So far as the Province of Bengal is concerned, there can be no presumption that a temple is a public one unless the contrary is proved. Private temples are quite numerous in this province and far outnumber the public shrines. We find large number of private temples also in Bengal which are built outside the residential houses of donors. Under Bengal Regulation XIX of 1810 and Madras Regulation VII of 1817, the British Government assumed control of all public endowments Hindu and Mahommedan in these provinces. The fact that an endow-

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(x) Prosad Das Pal V. Jagannath Pal—60 Cal. 538 ; see also Sathappayyar V. Periasami—14 Mad. 1.
(y) 1915 M.W.N. 842.
(z) 61 I.A. 405 ; 39 C.W.N. 518.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

ment was in existence at the time of these regulations and yet it was not taken control of by the Government is undoubtedly material to show that the endowment was private (a), but the fact is not conclusive by any means and as the Privy Council decision referred to above shows (b), even if the Board of Revenue did not take charge of the endowment under the Regulations, the other circumstances may legitimately give rise to the presumption that it was a public endowment (c). When however it is shown that Government did take charge of an endowment under the aforesaid Regulation, it would be conclusive to prove its public character (d). It has been held by the Nagpur High Court that remission of land revenue in respect of the lands on which a temple stands is one of the decisive factors for determining whether the temple is a public or private one (d[1])

In Malabar the right of superintendence exercised by former rulers is known as 'Melkoima'. The exercise of 'Melkoima' right in a temple would be strong evidence in favour of its public character (e). Similarly a grant made by previous rulers which is confirmed by the British Government is *prima facia* evidence of public endowment (f).

In Chintamoni Bajaj V. Dhondo Ganesh (g) the original founder of a *Sevasthan* was a devotee of the deity Shri Mangalmurti. He dedicated a temple to the deity and established an *Annachatra* and a *Sadavart* for feeding the poor and the destitute. The local Raja conferred on his descendants, from time to time, grants of land for the maintenance of the shrine and the charities connected with it. Votaries of god Shri Mangalmurti visited the shrine in large numbers and took part in the annual festivals and

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(a) Delrus Banoo V. Nawab Syed Ashgar Ally Khan—15 B.L.R. 167.
(b) 29 C.W.N. 112.
(c) See Sheoratan V. Ram Pargash—18 All. 227; Md. Attar V. Ramjan—34 Cal. 587.
(d) See Protap Chand V. Brojo Nath—19 Cal. 275.
(d[1]) Luxman Rao V. Gobind (1950) Nag. p. 1.
(e) Subramaniya V. Venkatochala—4 L.W. 444.
(f) Trimbak V. Lekhram—20 B. 495. See also Iyer on Endowment p. 162 (2nd Edition).
(g) 15 B. 612.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

celebrations held in honour of the god. It was held that the institution was a public one.

There may be nothing peculiar in the mode of worship by which one may distinguish a private from a public temple. When however the question arises as to whether or not a temple has been dedicated to a particular sect, the performance of the worship of the idol in accordance with the rites of the sect for whose benefit it was held might be treated as evidence of dedication (h). The appointment of Archakas or other functionaries as the reciters of Vedas and Tamil Prabandhas, which are the usual features of a public temple in the Madras Presidency is also relevant to indicate the public character of the endowment (i). As in the case of highways, the presumption of dedication founded on user may be rebutted by showing that although ordinarily the public were not prevented from entering the temple, yet the founder or his descendants did exercise the power of closing the temple on particular days or on specified occasions. The fact that a man was excluded on account of his being excommunicated from the Hindu society or on account of his bad behaviour would not however rebut the presumption.

Several special Acts and Regulations apply only to public endowment. So does sec. 92 C. P. Code.

The distinction between private and public Debutter involves certain important legal consequences. As has been said already, Bengal Regulation XIX of 1810 and the Madras Regulation VII of 1817 applied exclusively to public endowments both Hindu and Mahommedan. These regulations were repealed by the Religious Endowments Act (Act XX of 1863) by which the Government divested itself of the charge and control of these institutions and placed them under the management of their own respective creeds. This Act of 1863, however, is applicable only where the regulations mentioned above could be applied i.e. to say in case of public endowments. Private endowment, either Debutter or of any other kind is outside the pale of the Religious Endowment Act of 1863 and the rules enacted therein to ensure proper management and to empower the superior courts in

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(h) Mohan Lalji V. Gordhan Lalji—40 I.A. 97.
(i) Peesapati V. Kanduri—18 M.L.T. 543 ; (1915) M.W.N. 842.

CENTRAL LIBRARY

the district to take cognisance of allegations of misfeasance against the managing authorities could not be availed of in the case of a private endowment. The Charitable and Religious Trusts Act (Act XIV of 1920) is also inapplicable to a private endowment. The object of the endowment, as stated in the preamble, is to provide facilities for the obtaining of information regarding trusts created for public purposes of a charitable or religious nature and to enable the trustees of such trusts to obtain the direction of courts on certain matters and to make specific provision for the payment of the expenditure incurred in certain suits against the trustees of such estates.

The Madras Hindu Religious Endowment Act (Act III of 1927) and the Orissa Act of 1939 are applicable exclusively to public religious endowments in these provinces. Quite apart from these special Acts, sec. 92 of the C. P. Code contains the general provision that when there is an alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or when the direction of the court is necessary for the administration of any such trust, the Advocate-General or two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate-General, may institute a suit in the principal Civil Court of Original Jurisdiction for obtaining all or any of the reliefs specified in the section. No suit at the instance of any other person or in any other court is maintainable in such cases. I will have to discuss these matters more elaborately later on, and it would be enough to point out at this stage that these provisions constitute substantial difference in the legal incidence of the two kinds of endowment and materially affect the question as to what remedies are open to the parties in cases where there is maladministration of the endowment by the manager or trustee.

In English law, as has been said already, there cannot be a charitable trust for the benefit of particular individuals or members of a particular family. Thus a trust for establishment of a private chapel would not be a charity in the legal sense of the word. Such trust would be subject to the rules against perpetuity and remoteness, and could enure only for the

CENTRAL LIBRARY

period that is sanctioned by these rules. In Hindu law the institution of a family idol is regarded as a valid religious trust, and consequently the rule against perpetuity or remoteness would not be attracted even to such Debutter. It would be a religious or charitable trust in the legal or technical sense even though the persons benefited are members of a particular family.

Whether in private Debutter the consensus of the family can give the property a secular turn ?

There is another principle of English law according to which the persons interested in a private trust has the power or authority to use the trust fund for any purpose and divert it from its original object. In other words, the beneficiaries if they are *sui juris* and of one mind may at their option modify or put an end to the Trust (j). One point which is still debatable in Hindu law, is whether this principle can be applied to a private or family Debutter ?

In Konwar Doorga Nath V. Ram Chandra (k), their Lordships of the Judicial Committee observed, in course of their judgment, that in the case of a family idol the consensus of the whole family might give the Debutter estate a secular turn. The case arose out of a suit to set aside certain alienations of an ancestral mahal on the ground that the mahal had been dedicated to the worship of an idol. The defence was of a two-fold character : First, that there was no dedication, and even if there was, there was legal necessity justifying the alienation. On evidence, their Lordships of the Judicial Committee agreed with the High Court in holding that the estate was not dedicated, and they further held that the alienations were justified. The suit therefore had to be dimissed. In course of their judgment, the Judicial Committee observed as follows :—

"If the deed of endowment from Rajah Mahanand were satisfactorily proved, and it were an endowment which dedicated this Mahal to the service and worship of a particular idol, then, though the idol were a family idol, the property would be impressed with a trust in favour of it. Where the temple is a public temple, the dedication may be such that the family itself could not put an end to it ; but in the

(j) Underhill on Trusts & Trustees, Art. 55.
(k) 4 I.A. 52

CENTRAL LIBRARY

case of a family idol the consensus of the whole family might give the estate another direction. No question, however, of that kind arises in the present case." The observation therefore is an *obiter dictum* pure and simple, and as the property was not found to be Debutter, the question did not arise at all for decision. The observation however has been treated as an authoritative pronouncement of law in some of the decisions in India, though its propriety has been questioned in many others. It may be, that in making this observation their Lordships had in mind the ordinary principle of the law of private trust which obtains in England. The point does not seem to have been argued or discussed before the Judicial Committee, and had that been done there can be no doubt that their Lordships would have at once appreciated that there is considerable difficulty in applying this principle to a family Debutter in Hindu law. In the first place, even if property is dedicated to a family deity, the endowment is a religious and charitable trust in the proper sense of the term, and as the law of perpetuity or remoteness cannot affect such dedication, there is no reason why the other incidents of private trust should be applied to it. In the second place, the deity itself is a juridical person in Hindu law and the dedicated property vests in it absolutely. The property cannot therefore be taken away from the deity or diverted to other purposes without the consent of the idol. The consent of the beneficiaries who are not the donees is really immaterial and cannot make a gift revocable which is irrevocable in law. It is true that the deity can express consent through earthly agents, but the latter as guardians of the deity cannot in law consent to anything which amounts to an extinction of the deity itself. It would be futile to argue that a family idol is a mere movable chattel and if the worshippers agree they can throw it into the river and put an end to the endowment (1).

The observation of the Judicial Committee in Kanwar Doorga Nath V. Ram Chandra (m) was given effect to by a Division Bench of the Calcutta High

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(l) See Promatha V. Pradyumna—30 C.W.N. 25 ; 52 I.A. 245.
(m) 4 I.A. 52.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

Court in Gobinda Kumar V. Debendra (n) and it was held that the several instances of alienation of the Debutter property by the members of the family on the footing that the property was secular, proved that by common consent the Debutter was given a secular turn. On the other hand the soundness of the opinion expressed by the Judicial Committee has been questioned by Chatterjee, J. in Chandi Charan V. Dulal (o) and by Rankin, C. J. in Surendra Krishna V. Shree Shree Bhubaneswari (p). In course of his judgment in the last mentioned case Sir George Rankin observed as follows :—

"I am not prepared to hold on the strength of the well known passage in the case of Doorga Nath Roy V. Ram Chandra Sen (4 I.A. 52) that there is in Hindu law any warrant for the proposition that at any particular time by consent of all the parties then interested in the endowment a dedication can be set aside. The passage so much relied upon does not appear to me to be intended as a considered opinion to that effect, and before importing any such doctrine into the Hindu law there is much to be considered" (q).

The case went up to the Judicial Committee but this particular question was left undecided by their Lordships (r).

Even if it be held that a consensus of the family can convert Debutter into secular estate, it must be noted that Shebaits qua Shebaits by their dealings with the property cannot give it a different turn. The Shebaits occupy the position of managers merely, and the acts of the manager which amount to breaches of trust cannot put an end to the trust. The consent must be expressed by all the beneficiaries which in the case of a family idol includes all the members of the family both male and female who are interested in the worship of the deity. If consent of the entire family is not proved, certain dealings with the property by some members of the family who

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(n) 12 C.W.N. 98.
(o) 54 Cal. 30 ; 30 C. W. N. 930.
(p) 60 Cal. 54.
(q) Vide also the observation of Chakravarty J. in Sripati V. Krishna. 41 C. L. J. 22 at p. 26.
(r) See 64 I.A. 283.

CENTRAL LIBRARY

happen to be Shebaits, as secular property, would not effect any conversion. Of course if the transactions are such that the entire family took part in them they may be treated as evidence of consent (s). If the original Debutter character of the property is established, the fact that the property had been partitioned between the members of the family for the better enjoyment thereof, and that there had been sales and mortgages of some portions by some of the members would not show that there was a consensus to give the property a secular turn (t).

Kattalai or special grant.

Before I close this chapter one thing requires to be noticed and that is a special grant for religious services in a temple which is in vogue in Southern India and is known by the name of 'Kattalai.' As Muttusami Aiyyar, J. explained in Vythilinga V. Somasundara (u), in ordinary parlance, the term 'Kattalai' as applied to temple means endowments and signifies a special endowment for certain specific service or religious charity in the temple. *Ardajama* Kattalai or endowment for midnight service is an instance of the former and Annadan Kattalai or an endowment for distributing food to the poor is an example of the latter. In this sense the word 'Kattalai' is used in contradistinction to the endowment designed generally for the upkeep and maintenance of the temple. In the case of some important temples, the sources of the income are classified into distinct endowments according to their importance. Each endowment is placed under a separate trustee and specific items of expenditure are assigned to it as legitimate charges to be paid therefrom. Each of such endowments is called also a 'Kattalai' and the trustee who administers it is called the Kattlaigar or 'stanik' of the particular Kattalai. The import of this expression was discussed in details by Sesagiri Aiyyar, J. in Ambala vana V. Sree Minakshy (v). According to the learned Judge, this expression is used with reference to three different kinds of endowments. Properties may be endowed for the perform-

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(s) Monmohan V. Siddheswar—27 C.W.N. 218.
(t) Dharmadas V. Gostha Behary—16 C.W.N. 29.
(u) 17 Mad. 199 at p. 200.
(v) 28 Mad. L.J. 217 at p. 228.

CENTRAL LIBRARY

ance of 'Pujas' in the temple or for the performance of certain festivals in the temple or for the performance of Archanas to the deity in the name of the donor. Ordinarily, the Puja is not performed in the name of the donor and consequently supplementary grants are made by pious persons for the purpose of the service being more efficiently performed. Instances of this type of grant are to be found in the famous temple at Chidambaram, where almost all the necessary daily services are conducted by means of 'Kattalais' endowed by pious donors. It also happens that where lands for funds in respect of particular service or festival at temples are not sufficient for conducting them on the original scale, new donors come forward to supplement these funds. For Archana however, no supplementary grant by other donors is possible. It is intended solely for the spiritual benefit of the grantor and it is not the concern of third parties to help in his performance if the funds are for any reason not found sufficient. Whatever the exact nature of Kattalais may be and those must depend upon the usages of particular temples, one thing ought to be remembered in this connection and that is that when the grant is to the deity and the income of particular funds is ear-marked for special services which are entrusted to special trustees, if there is a surplus which cannot be spent on these services, it would be a case for the application of the *cypres* doctrine and the special trustee can, on no account, claim the surplus. This has been held by the Judicial Committee in a recent case from the Madras High Court which is to be found reported in N. Sankarnarayana V. The Board of Commissioners for the Hindu Religious Endowments, Madras (w).

(w) A.I.R. 1948 P.C. 25.

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LECTURE V.

Management of Debutter—Shebaitship—its legal character and incidents.

Shebait the human ministrant of the deity.

In the last lecture I have dealt with the general features of a religious endowment which is known as Debutter, and which arises on dedication or gift of property to an idol. It would now be necessary to enter into details and discuss how a Debutter is managed and administered. As has been said already "it is in an ideal sense that the dedicated property vests in an idol", and in the nature of things the possession and management of it must be entrusted to some person as Shebait or manager. "It would seem to follow", as the Judicial Committee observed in Prosonna Kumari Debya V. Golab Chand Baboo (a) "that the person so entrusted must of necessity be empowered to do whatever may be required for the service of the idol and for the benefit and preservation of its property, at least to as great a degree as the manager of an infant heir. If this were not so, the estate of the idol might be destroyed or wasted, and its worship discontinued for want of necessary funds to preserve and maintain them". This human ministrant of the deity who is its manager and legal representative is known by the name of Shebait in Bengal and northern India. He is called the Dharmakarta in the Tamil and Telegu districts, Panchayetdar in places like Tanjore and Urallen in Malabar. He is the person entitled to speak on behalf of the deity on earth and holds authority to deal with all its temporal affairs. As regards the temple property the manager is in the position of a trustee, but as regards the service of the temple and the duties that appertain to it he is rather in the position of the holder of an office or dignity (b). For purposes of convenience we will call the manager by the general name of Shebait, though we are not unaware of the fact that a distinction has been made

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(a) 2 I.A. 145.
(b) See Ramanathan Chetti V. Murugappa—33 I.A. 139.

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in some cases between a Shebait and a Dharmakarta (c).

When a man founds a deity, then if he does not appoint a Shebait he himself becomes responsible for the services of the deity . This responsibility is often maintained by a Hindu either by the personal performance of religious duties, or in the case of Sudras by the employment of a Brahmin priest. Even if no Shebait is appointed at the time of dedication, the founder may exercise this power any time before his death and failing him the power can be exercised by his successors as well (d).

Pujari differs from Shebait.

A *Pujari* or *Archaka* is appointed by the founder or Shebait to conduct the worship. He is a servant of the Shebait and no part of the rights and obligations of the latter are transferred to him (e). When the appointment of a *Purohit* has been at the will of the founder, the mere fact that the appointees have performed the worship for several generations will not confer an independent right upon the members of the family so appointed and will not entitle them as of right to be continued in office as priests (f).

Hereditary priest.

The founder can undoubtedly provide that the right of performing the Pujas shall remain in a particular family, and in case of ancient temples there may be hereditary priests on the footing of a custom. But even a hereditary priest can be removed if he is guilty of micconduct, and it is within the competence of a civil court to determine whether misconduct has been proved or not (g). If the founder vests the Shebaitship in a family of priests who perform the religious rites of the deity as well, the office of the Archaka and the Shebait, can be united in one and the same person or persons. In the famous Chidambaram temple the Archakas themselves are the managers. In Nafar Chandra Chatterji V. Kailas Chandra (h), by an agreement between the

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(c) See Srinivasa V. Evalappa—49 I.A. 237.
(d) Pramatha V. Pradyumna—52 I.A. 245.
(e) See Ananda V. Brojo—50 Cal. 292.
(f) Kalikrishna V. Makhanlal—50 Cal. 233 ; Nanbhai V. Trimbak—(1878) Bom. P.J. 195 ; Maharanee Indrajit V. Chundeman—16 W.R. 99.
(g) See Jagannatha V. Seenu—42 Mad. 618.
(h) 25 C.W.N. 201.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
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Shebaits of a Thakur and a family of Chatterjees, the latter were appointed Pujaris and some land was placed in their possession in order that the income might be applied for the purpose of worship and maintenance of the Sheba, and it was stipulated that the Chatterjees should be pujaris from generation to generation, but in case they were found guilty of misconduct or neglect of duty by a tribunal constituted under the agreement, they were to forfeit their office. It was held that such agreement was quite valid, and the conditions of forfeiture annexed to the office were not void for remoteness. It was further held that if the proceedings before the tribunal constituted under the agreement were regular their decision would be quite proper and binding upon the parties.

Legal position of a Shebait or manager. Shebait not a a trustee in the English sense.

The exact legal position of a Shebait or manager can not be said to be altogether beyond the range of controversy, though much of the earlier theories has now been discarded. It is now settled by the pronouncement of the Judicial Committee in Vidyavarathi V. Balusami (i) that the relation of a shebait in regard to the Debutter property is not that of a trustee to trust property under the English law. In English law the legal estate in the trust property vests in the trustee who holds it for the benefit of the *cestui que trust.* In a Hindu religious endowment. the entire ownership of the dedicated property is transferred to the deity or the institution itself as a juristic person, and the shebait or Mahant is a mere manager. "A trust" thus runs the judgment of the Judicial Committee "in the sense in which the expression is used in English law, is unknown in the Hindu system pure and simple. Hindu piety found expression in gifts to idols and images consecreted and installed in temples, to religious institutions of every kind, and for all purposes considered meritorious in the Hindu social and religious system.....Under the Hindu law the image of a deity of the Hindu pantheon is....a juristic entity, vested with the capacity of receiving gifts and holding property. Religious institutions known under different names are regarded as possessing the same juristic capacity and

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(i) 48 I.A. 302.

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gifts are made to them *eonomine*. In many cases in southern India, especially where the diffusion of Aryan Brahminism was essential for bringing the Dravidian people under the religious rule of the Hindu system, colleges and monasteries under the names of Math were founded under spiritual teachers of recognised sanctity. When a gift is directly to an idol or temple, the seisin to complete the gift is necessarily effected by human agency. Called by whatever name, he is only the manager and custodian of the idol or the institution. In almost every case he is given right to a part of the usufruct, the mode of enjoyment and the amount of the usufruct depending again on usage and custom. In no case was the property conveyed to or vested in him, nor is he a 'trustee' in the English sense of the term, although in view of the obligations and duties resting on him, he is answerable as a trustee in the general sense for maladministration".

Shebaitship is not mere office, it is property as well.

But though a Shebait is a manager and not a trustee in the technical sense, it would not be correct to describe shebaitship as a mere office. The shebait has not only duties to discharge in connexion with the endowment, he has also a personal interest in it. As the Judicial Committee pointed out in the above case, in almost all Debutter endowments, the shebait has a share in the usufruct of the Debutter property, which depends either on the terms of the grant or upon custom or usage. Even when no emoluments are attached to the office of a shebait, he enjoys some sort of right or interest in the endowed property which has partially at least the characteristics of a proprietary right. As you shall see later on, that although the shebait's power to alienate the Debutter property is very much limited and can be exercised only when there is a justifying legal necessity or benefit to the deity, yet he can create derivative tenures in respect of the endowed property, which even if not supported by legal necessity cannot be impeached so long as he is alive and remains in office. The shebait therefore has to some extent the rights of a limited owner. It has now been decided by a Full Bench of the Calcutta High Court (j) after an elaborate review

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(j) Vide Monohar V. Bhupendra—60 Cal. 432.

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of all authorities that Shebaitship is property, with regard to the disposition of which the rule in Tagore V. Tagore (k) is applicable, and this decision has been approved of by the Privy Council in Ganesh Chandra V. Lal Behary (l) and again in Bhabatarini V. Ashalata (l[1]).

Office and property are both blended in the conception of shebaitship, the personal interest of a shebait being appurtenant to his duties.

Thus in the conception of shebaitship both the elements of office and property, of duties and personal interest are mixed up and blended together. Undoubtedly the duties of a shebait are to be regarded as the primary thing whereas the emoluments or beneficial interest enjoyed by him are only appurtenant to the said duties (m). Neither of these elements however can be detached from the other, and in dealing with the law relating to the rights and obligations of the shebait, both these elements would have to be kept in view.

Shebaitship remains in the founder and his heirs unless disposed of.

When a deity is installed, the shebaitship remains in the founder and his heirs. "According to Hindu law", thus observed Lord Hobhouse in Gossamee Sree Greedhareejee V. Ruman Lalljee (n)—and this observation has been reiterated in numerous cases since then—"when the worship of a Thakoor has been founded, the shebaitship is held to be vested in the heirs of the founder, in default of evidence that he has disposed of it otherwise, or there has been some usage, course of dealing, or some circumstances to show a different mode of devolution". Unless therefore the founder has disposed of the shebaitship in any particular way and except when an usage or custom of a different nature is proved to exist, shebaitship like any other species of heritable property follows the line of inheritance from the founder.

It devolves like any other species of heritable property.

The founder's powers of disposal over shebaiti right are subject to the same limitations which exist in Hindu law in respect to disposal of any other property. The rule in Tagore V. Tagore (o) prevents a Hindu from disposing of his property in such a way, as to create any interest in favour of an unborn

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(k) 9 B.L.R. 377.
(l) 63 I.A. 448. (1[1]) 70 I.A. 57 ; (1943) 2 Cal. 137.
(m) Vide Nagendra Nath V. Rabindra—30 C.W.N. 389
(n) 16 I.A. 137.
(o) 9 B.L.R. 377.

CENTRAL LIBRARY

Founder's powers of disposition over shebaiti right subject to same limitations as other property. The rule in Tagore V. Tagore applies to such dispositions.

person. It is not also permissible for a Hindu to create a line of succession unknown to Hindu law. For a time it was the subject matter of some controversy in our courts of law, whether the principle of the Tagore case applies to provisions made by the founder of a Hindu Debutter regarding succession to the office of shebait. In Gnanasambanda V. Velu Pandaram (p), the Judicial Committee observed in course of their judgment that "the ruling in Tagore V. Tagore (q) is applicable to an hereditary office and endowment as well as to other immovable property". The main question raised in this case was one of limitation under Article 144 of the Indian Limitation Act, and the point canvassed was whether each shebait succeeding to his predecessor could claim a fresh start for purposes of limitation, inasmuch as he derived his title, not from his predecessor, but from the original donor. The Privy Council negatived this contention, and held that the creation of successive life estates in regard to shebaiti right was repugnant to Hindu law. Different views were expressed by different Judges in India regarding the interpretation to be put upon the observation of their Lordships quoted above. One set of decisions took the view, that gift or devise of shebaiti right which contravenes the rule in Tagore V. Tagore (r) is bad in law and cannot be enforced. The case of Promotho Nath V. Anukul Chandra (s) may be taken as a type of such pronouncements. In this case a Hindu by his will made a gift of certain properties to an idol and appointed some persons, shebaits of the endowment. He further provided that after the death of the aforesaid shebaits, the seniormost in age amongst their legal heirs would be the shebait. It was held that the principle of law enunciated in Tagore V. Tagore (t) and extended to an hereditary office and endowment by Gnanasambanda V. Velu (u) was applicable to this case and consequently the bequest, so far as it provided that the person senior in age

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(p) 27 I.A. 69.
(q) 9 B.L.R. 377.
(r) 9 B.L.R. 377.
(s) 29 C.W.N. 17.
(t) 9 B.L.R. 377.
(u) 27 I.A. 69.

CENTRAL LIBRARY

amongst the heirs of the first shebaits shall succeed as shebait failed, and the shebaitship reverted to the heirs of the founder. On the other hand in Mathura Nath V. Lakhi Narain (v) Richardson, J. expressed the view that the rule in Tagore's case is only a general rule to which there are several exceptions, and the nomination of a shebait may be taken as one of the exceptions. The observation in Gnanasambanda's case was held to be a mere *obiter* which had little or no bearing on the particular question decided in that case. In Sreepati V. Krishna (w) Chakravarty, J. definitely held that as the shebait has no right to property, and is a mere holder of an office with the rights and limitations applicable to the guardian of a minor, the rule in Tagore's case could not properly be extended to appointment of a shebait. The controversy so far as the Calcutta High Court is concerned has been set at rest by the Full Bench decision in Monohar V. Bhupendra (x), where it has been held that shebaitship is not merely office, it is property as well and in regard to disposition of shebaiti right the rule in Tagore V. Tagore (y) is applicable. The same view has been taken by the Judicial Commiittee in Ganesh Chandra V. Lall Behary (z), and later on in Bhabatarini V. Ashalata (a). The position now is that the founder of a Debutter is competent to lay down any rules to govern succession to the office of the shebait subject to this restriction that he can not create any estate unknown or repugnant to Hindu law. In Monohar V. Bhupendra (b) the founder Jagamohan who created the Debutter provided, by his will, that his eldest son should be the first shebait and that after his death his other sons one after another would be shebaits in the order named. After the death of all the sons of the testator, the office of the shebait was to be held from time to time by the eldest male member of the family for the time being, and no daughter or daughter's son could ever

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(v) 50 Cal. 426.
(w) 41 C.L.J. 22.
(x) 37 C.W. N. 29.
(y) 9 B.L.R. 377.
(z) 63 I.A. 448.
(a) (1943) 2 Cal. 137 ; 70 I.A. 57.
(b) 37 C.W.N. 29.

CENTRAL LIBRARY

hold the office. The appellant Monohar claimed shebaitship on the ground that he was the eldest male member of the family. It was not disputed that he was the eldest member ; but the fact was that he had not been born during the life-time of the testator. It was held that the provision in the will to the effect, that the eldest male member of the testator's family should be the sole shebait, was ineffective in law to entitle such a male member to the office when he was not in existence till after the testator's death. Rules for succession to shebaitship cannot be valid if they provide for the office to be held by some one among the heirs of the founder to the exclusion of others in a succession differing from the line of heirs according to Hindu law.

In Ganesh Chandra V. Lal Behary (c) a testator by his will appointed his two sons K. and R. to be shebaits, and further directed that upon the death, retirement or refusal to act of any of them or any of the future shebaits, the then next eldest male descendant of K. or R. should act as shebait in his place, it being his intention that the eldest for the time being in the male line of the said two sons shall always remain joint shebaits. At the time of the suit K. and R. were dead, but there were living N, the son of K, and four sons of R, of whom the eldest was L. N. and L. were both in existence at the time of the testator's death. The question was which of the sons of K. and R. were entitled to shebaitship ? It was held by the Judicial Committee that the provision in the will in so far as it related to the holding of the office after the respective deaths of K and R, constituted an invalid attempt to lay down a line of succession not permissible under Hindu law, and on their deaths the succession to the office and the income of the estate would be according to the Hindu law of successsion. It was held further that there being no independent gift of the office for life in favour of persons, who were to take respectively on the death or retirement of K, and R, even L, and N, who were born during the testator's life-time were not entitled to come in as shebaits.

(c) 63 I.A. 448 ; 41 C.W.N. 1.

CENTRAL LIBRARY

As shebaitship is property it can be given absolutely or for a limited period. If it is given absolutely it would be a case of hereditary shebait and after the death of the grantee his heirs and not the heirs of the grantor would become shebaits (d).

Shebaitship can be given absolutely or for life. Successors of hereditary shebait are his heirs.

If it is given for a limited period e.g. for the life time of the grantee, the heirs of the founder would come in as shebaits after his death. A difficulty arises sometimes regarding the method of ascertaining as to who the heirs of the founder are ; ordinarily the expression 'heirs of the founder' would mean those persons who would be the nearest heirs of the founder, if he had died at the moment when the question of succession to shebaitship arose. If this method is applied, the position would be that a shebait appointed for his life time would be deemd to hold his office in the same way as a Hindu widow holds her husband's estate. No other person would have anything like a remainderman's interest so long as the shebait is alive, and the next shebait would be the nearest heir of the founder existing at the date of his death. This was the view taken in Kunjamoni V. Nikunja (e). In this case the founder was one Jasamant and the endowment was created by a will which provided that all the properties of the testator would devolve on his family deity Shamsundar. The testator appointed his second wife Bhagirathi, his youngest son Jagadanand, and another son Brojendra successive executors and shebaits, and although he had four other sons at the time of his death, he gave no further directions regarding the devolution of shebaitship after Brojendra's death. Brojendra the last shebait under the will died in 1887, and at that time Raimohan, Pyarimohan, Jogendra and Sarada, the four sons of the founder were his next heirs under the Hindu law. In 1910, a suit was instituted by Nikunja, the son of Pearimohan for establishment of his title as shebait to the extent of four annas' share by inheritance from his father and his claim was allowed by both the courts below, and upheld on

Heirs of founder succeed after the death of a shebait for life. How to ascertain the heirs of the founder at that time ?

(d) Vide Tripura V. Jagat Tarini—40 I.A. 37 ; Panchanan V. Surendra—50 C.L.J. 382 ; Kunjamoni V. Nikunja—22 C.L.J. 404.

(e) 22 C.L.J. 404.

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second appeal by the High Court. Now if Brojendra had the shebaitship absolutely in him, there is no doubt that after his death his heirs and not the heirs of the founder would be the next shebaits and his heirs were his four brothers who were actually living at the date of his death. The High Court in one part of the judgment took the view that Brojendra was a shebait not for life but absolutely, and consequently his heirs and not the heirs of the founder would come in as shebaits after his deaths. The learned Judges however proceeded further and said that even if Brojendra was a shebait for life, the claim of the plaintiff could not be defeated. It is to be noted that the contention raised on behalf of the appellant Kunjamoni, the widow and heir of Jogendra was to this effect that as Bhagirathi, Jagadanand and Brojendra, had each a life interest in the shebaiti, the remainder of the right remained vested in all the six sons who were the heirs of the founder, and consequently the plaintiff Nikunja was not entitled to more than one-sixth share of the shebaiti right which his father had under law. This contention was overruled and Ashutosh Mookerjee, J. in course of his judgment observed on this point as follows :—"We are of opinion that this contention is unsound and that the principle of vested interest while the actual enjoyment of the expected interest is postponed till the termination of the life estate, as expounded by their Lordships of the Judicial Committee in Rewan Pershad V. Radha Beeby (f) has no application to cases of the description now before us. No doubt a shebait holds his office for life.....but this does not signify that he has a life interest in the office with the remainder presently vested in the next taker. The entire office is vested in him.... The position of a shebait is analogous to that of a Hindu female.....in possession of the estate of the last full owner, rather than to the holder of a life estate".

The propriety of this part of the judgment was doubted by B. K. Mukherjea, J. in Bhabatarini V. Ashalata (g), and was finally upset by the Judicial Committee in the appeal taken to it against the judg-

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(f) 4 M.I.A. 137.
(g) (1943) 2 Cal. 137 : 70 I.A. 57.

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ment of the High Court in that case. It must be taken to be settled by the decision of the Privy Council that when the founder makes only a limited grant of shebaitship, the residue still remains in him and his heirs as an estate of inheritance. When the limited shebaitship ends, the next shebait would be the person in whom this residuary estate of the founder was vested at the date of the termination of the limited shebaitship. In Bhabatarini V. Ashalata (h) the material facts were as follows :—S a Hindu established in his life-time certain family idols and dedicated to them certain properties by a deed which provided that he and his wife would be the first joint shebaits, and on the death of the survivor among them their son P should be the shebait. There were further provisions relating to succession of shebaitship after the death of P but they were invalid in law. The wife of S died first, and then S died leaving a daughter B, and his son P. P then died leaving his wife A, and three daughters. The question was, as to who as between B and A would be entitled to shebaitship after the death of P. Mr. Justice Khundkar sitting in the original side of the Calcutta High Court decided in favour of B as she was the nearest heir of the founder when P died, and the learned Judge relied entirely upon the decision in Kunjamoni V. Nikunja (i) referred to above. On appeal the decision was reversed by Derbyshire, C. J. and Mukherjea, J. Mukherjea, J. expressed the view that as P had not the shebaiti right absolutely vested in him the residuary right still remained in S and his heirs, and as P was the sole heir of S, both the limited and the residuary rights were united in him. His position therefore was that of an absolute shebait, and after his death, his heirs and not the heirs of the founder would be entitled to succeed as shebaits. On appeal to the Privy Council, the judgment of the appeal bench was affirmed, though their Lordships somewhat broadened the ground upon which the decision of Mr. Justice Mukherjea was based. The view of the Privy Council seems to be that as there was no

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(h) (1943) 2 Cal. 137 ; 70 I.A. 57.
(i) 22 C. L. J. 404.

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provision for devolution of shebaitship after the death of P, the residuary right remained from the beginning in S, the founder and it went on devolving as a species of heritable property on his successors in the order laid down by Hindu law. When P died this residuary right was vested in A his widow, and the office which terminated with P would now revert to A as the nearest heir of the founder. The expression "heirs of the founder" would therefore mean not the persons who would have the right to succeed if S had died at that moment, but it would mean those in whom the residuary shebaiti right, which was in the founder from the very beginning had come to vest at that time by successive devolutions under the Hindu law of inheritance.

As said above it is open to the founder to dispose of shebaitship in any way he likes and such dispositions would be given effect to if they are not contrary or repugnant to Hindu law. The founder may appoint one person or a number of persons as shebaits, he may give it to a single family or a number of families, and he may empower a shebait to nominate his successor or vest the power of nomination in some body else.

Founder cannot alter or revoke the appointment after it is made, unless such powers are reserved by him.

Once the appointment is made and the line of devolution laid down, is it competent for the founder to alter or revoke it afterwards ? On the authorities as they stand the answer has got to be given in the negative, unless the right of revocation or alteration has been reserved at the time when the grant was made.

In Gouri Kumari V. Indra Kumar (j) Woodroff, J. said : "It is clear that the donor of a Debutter property can make no change in the order of succession of shebaits as laid down in the deed of endowment in the absence of a reservation to that effect in the deed." This decision was followed by Graham and Mitter, JJ. in Monoroma Dasi V. Dhirendra Nath (k) and still later by Mukerji and Ghosh, JJ. in Narayan Chandra Dutt V. Bhuban Mohini (l). In the case last mentioned, the founder,

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(j) 50 Cal. 197.
(k) 34 C. W. N. 1087.
(l) 38 C.W.N. 15. See in this connection Radhika V. Amrita A.I.R. (1947) Cal. 301.

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by his first Arpannama, which created the endowment, appointed himself the first shebait, his wife, should she survive him, the next shebait, and thereafter his heirs in the order of succession. The wife of the founder died during his life time and then he made a fresh Arpannama by which he appointed a cousin of his as shebait of the Debutter after him, and after the death of the latter, his sons according to primogeniture. There was no reservation of any power in the first Arpannama to alter or amend the rule of devolution of shebaitship. It was held that the second Arpannama was invalid and on the death of the founder his legal heirs would succeed as shebaits. Two principles, it seems, have been invoked by Judges in support of the proposition that the appointment, once made, cannot be altered, unless the authority to make any alteration was reserved by the founder. The first is that when the gift or dedication to the deity is complete and the founder without any reservation has appointed the line of shebaits, he himself, becomes *functus officio* as founder and the only rights which he might retain are those that appertain to the office of shebait (m). His rights as founder being gone, *qua* shebait he has no right to alter the line of shebaitship. The other principle which seems to have been relied on is, that the provision relating to the appointment of shebait is an integral part of the grant itself and the deity in accepting the grant accepts it with the condition relating to the appointment of shebait, attached to it. As the grant itself is irrevocable, the stipulation attached to the grant becomes irrevocable also (n).

In Sreepati V. Krishna (o) Chakraburtty, J. commented on the decision in Gouri Kumari V. Indra (p) referred to above, and the learned Judge expressed his view that these provisions regarding appointment of shebait, relating as they do to the management of the endowment, could be altered by the founder provided he has not expressly precluded

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(m) Vide the observations of Page, J. in Chandi Charan V. Dulal—30 C. W. N. 930 at p. 937.
(n) Vide the observations of Mukerji. J. in Narayan V. Bhuban Mohini—38 C. W. N. 15 at p. 23.
(o) 41 C. L. J. 22.
(p) 50 Cal. 197.

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himself from doing so, provided such alteration does not affect any right of property of the shebait so appointed or the interest of any third party. This expression of opinion has been held to be a mere *obiter*, and the decision on the main point has been pronounced to be wrong by a Full Bench of the Calcutta High Court (q).

The point seems to have been canvassed in some cases that even without reservation, there is, under Hindu law, a residue of power left in the founder after he has made a dedication, and he should be allowed in exercise of this residuary power to make a change in the appointment of shebaits, if such a course is claimed to be just and proper. As I have told you in my first lecture, Hindu law givers do admit that the dedicator, even after he has parted with ownership in the thing dedicated, does retain some general powers of control or guardianship over it which entitles him to take steps if necessary to prevent it from being defiled or wasted (r). Mr. Justice Mitter In Monoroma V. Dhirendra (s) expressed his opinion that such right exists only in case of public endowments and not in private Debutter. I do not think that it is stated anywhere that such powers exist in case of public endowments only ; but be that as it may, as I have told you already in my first lecture, this power is given only temporarily to prevent any misuse of the dedicated property till the person legally entitled to hold it comes and takes charge of it. This power cannot possibly be invoked to alter the line of succession to shebaitship (t). When a power of revocation has been reserved by the grantor, certainly he can alter the appointment previously made, in exercise of such powers. When the dedication was made by two persons jointly and in the deed of endowment a power was reserved in favour of both of them to make any alteration with regard to shebaitship, the powers should be exercised jointly by

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(q) Monohar V. Bhupendra 37 C. W. N. 29.
(r) See Mandlik Vyabahar Mayukha p. 337.
(s) 34 C. W. N. 1087.
(t) Vide the observation of Mukerji, J. in Narayan V. Bhuban—38 C. W. N. 15 at p. 25.

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both, and one of them cannot exercise them after the death of the other (u).

It would be clear from what has been said above, that it is only the founder who can appoint shebaits, and lay down the line of devolution of shebaitship, and once he has made the appointment, he cannot alter or revoke the same, in the absence of a reservation of power to that effect in the deed of dedication. *A fortiori* a shebait, as such, cannot alter the line of succession to the office of shebait as laid down by the founder. It may be noted that a person does not necessarily become a founder by joining in the deed of endowment. If a Hindu widow makes a dedication and the reversioners join in the deed in token of their consenting to the transfer, the reversioners do not thereby become founders (v). Questions of alteration of the line of shebaits arise sometimes when subsequent to the establishment of a Debutter, additional grants of property are made to the foundation by a shebait or any other person interested in the same and the donor in making the gift appoints a new line of shebaits for the management of the property dedicated by him. The matter came up for consideration on more occasions than one before our courts of law and it is necessary that we should discuss briefly the law relating to additional endowments.

Additional endowments and alteration of the line of shebaits.

Additional endowments in favour of the family deity are frequently made by the descendants of the original owner, who may be shebaits themselves and obviously such grants are beneficial to the deity. It is settled law that the persons who subsequent to the foundation furnish additional contributions do not thereby become joint founders, and their benefaction is regarded nothing but an accretion to an existing endowment (w). No difficulty arises if such additional gifts are made by a donor without any condition attached to it. The gift would become the property of the idol and whoever the donor might be, the existing shebait of the idol would have the powers to

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(u) Chhotey Lal V. Gopaljee—A. I. R. 1940 All. 252.
(v) Chandra Choor V. Bibhuti Bhusan—A. I. R. 1945 Pat. 261.
(w) Per Mookerjee, J. in Ananda Chandra V. Brojolal—50 Cal. 292 ; 36 C. L. J. 356. See also Lalit Mohan V. Brojendra—53 Cal. 251.

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manage the property on behalf of the idol (x). Complications are created when the donor, in making the gift, purports to give directions which would alter the devolution of the office of the shebait, making the course of succession to depart either from the terms of the original grant, or in the absence of a grant, that which is in accordance with ordinary rules of Hindu law. The question arises in such cases, whether in giving effect to the additional gift, effect has to be given to the new directions given by the donor regarding the right of management of such property.

In Sripati V. Krishna (y) one Mangobind who was one of the shebaits and as such held a *Pala* of worship of certain family deities made gifts of property to the idols on two occasions during his life-time, and on each occasion instituted a new line of shebaits who were not the existing shebaits of the deities. It was held by Chakravarty, J. (Greaves, J. concurring) that a shebait for the time being cannot create a new line of shebaits of property already dedicated to an ancestral deity, but he could appoint new shebaits so far as his own endowment was concerned. With regard to the position of such new shebait, it was held that he would be allowed to manage the properties added to the endowment and should ordinarily place the income of such properties in the hands of the shebait appointed by the founder. If the original shebait agrees, the new shebait may act jointly with him. This view was not accepted by Page, J. in Lalit Mohan V. Brojendra (z). There one Gopal Chandra Seal who was entitled to a *Pala* of the worship of his family idols for four months in the year, in order to make further provision for the endowment, of which he was a shebait, but not the founder, dedicated, by way of an absolute trust, a house property situated in Calcutta. By the deed of Arpannama which was executed on 22nd February, 1897 Gopal Chandra laid down a new line of shebaits which was different from that laid down by the founder. The question arose, whether it was permissible for a person, who was a shebait and not the founder to alter the existing line

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(x) Dayamayi V. Sankar Nath—42 C.L.J. 30.
(y) 41 C. L. J. 22.
(z) 53 Cal. 251.

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of shebaits. Page, J. held that apart from usage or a consensus of opinion among those interested in the worship of the idols, in favour of such a course, a shebait is incompetent of his own will and pleasure to alter the line of shebaits laid down by the founder or by the common law of the land. It was held further that if the direction in the additional grant relating to a change in the line of shebaits amounted to a condition subsequent, such condition was void and the offending provision could be expunged without affecting the validity of the gift itself. This decision was affirmed on appeal by Rankin, C. J. and C. C. Ghosh, J. (a) though it does not appear that all the reasons given by Page, J. were accepted by the appeal bench. C. C. Ghosh, J., who delivered the judgment, observed that the conflict of opinion noticed in the judgment of Page, J. was more apparent than real. "It is undoubtedly open" thus observed the learned Judge, "to persons interested in the maintenance and worship of family idols to create additional endowments for the benefit of such idols. It is also undoubtedly open to such donors to lay down rules for the management of the subsequently endowed properties and to nominate the persons who should be the managers thereof. But such managers, although they may be described by the donor as shebaits, do not become shebaits of the family idols in the sense in which the shebaits nominated by the original founder are, nor do they become entitled to interfere in the management of the original endowed properties."

The question again came up for consideration before a Division Bench of the Calcutta High Court consisting of the same two Judges *to wit* Rankin, C.J. and C. C. Ghosh, J., in the case of Ashutosh Seal V. Benode Behary (b). In this case also there was a gift of certain additional property to the family deity by a shebait with a condition attached to it which varied the line of shebaits laid down by the founder. The Subordinate Judge who heard the suit, relying on the decision of Page, J. in Lalit V.

(a) 45 C. L. J. 41.
(b) 34 C. W. N. 177.

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Brojendra (c) held that the gift which was an accretion to an existing foundation was quite valid, and was not in any way affected by the condition relating to appointment of new shebaits which was void in law. This decision was reversed in appeal and Rankin, C.J. who delivered the judgment proceeded upon a ground which was quite different from that adopted in the earlier decision to which also he was a party. The learned Chief Justice pointed out that the true principle to be applied to a case like this, is not to uphold the gift and discard the condition attached to it as bad in law. The provisions regarding the devolution of the office of the shebait which was incorporated in the additional gift, was in his Lordship's opinion, not an unessential or superadded direction by which the gift was not affected as by a term or qualification; such conditions cannot also be regarded as conditions subsequent which are void for impossibility, but rather constitute a part of the very texture of the donor's gift. The true principle according to the Chief Justice which would serve as a guide to the decision of such cases is that enunciated by the Judicial Committee in Goswami V. Romanlalji (d). The provision relating to shebaits, being an essential condition attached to the additional gift, the idol, or those who are entitled to speak for it on earth, would be put to election and would have to choose whether the gift together with the condition attached to it should be accepted or not. The representatives of the idol if they so choose might reject the gift, but if they decide to accept the gift the condition attached to it must be observed. They cannot have the gift and at the same time repudiate the condition. This decision may thus be regarded as settling the law on the point. Ordinarily two questions arise for decision in cases of this description : (1) whether the appointment of a new line of shebaits is a condition attached to the additional grant ? and (2) if so whether the deity or his representatives elected to accept or reject the gift ? If acceptance is proved the condition must be obeyed. In this case it is further pointed out that a shebait making additions to an existing foundation cannot

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(c) 53 Cal. 251.
(d) 16 I. A. 137.

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himself accept the gift with the condition attached to it, even if it be for the benefit of the idol. It is the will of the idol which is to decide the matter. The question then arises, how is the will of the deity to be expressed ? The deity can express its desire only through human agents, and obviously it is the shebait who is entitled to speak on its behalf on earth. If the shebait for the time being is himself the donor, the will of the deity should be expressed through all those who are interested in the worship of the idol, and in case of family Debutter they would include all members of the family, male and female (e). Election need not be express, it may be implied also. If it is proved that for many years the deity enjoyed the rents and profits of the additional properties, and treated them as part of the original endowment, a presumption may arise that it has elected to accept the gift.

As has been said already, if no condition is attached to an additional contribution to the Debutter estate, by way of alteration of the existing line of shebaits, the additional gift simply becomes an accretion to the existing Debutter, and its management would vest in the shebaits of the original endowment. In Raisundary V. Benode Behary (f) it was held that this was not an absolute rule, and the question would have to be decided with reference to the facts of each case. In this case there was division of the turn of worship amongst two branches of the founder's family according to which one branch was to worship for 19 days every month and the other for 11 days. This arrangement continued for many years and then the head of one branch made a will by which he directed that on certain eventuality, all his properties should be devoted to the worship of the idol. It was held that the intention of the testator was not to make a general and absolute gift in favour of the idols, but to direct the application of his properties to the carrying on of his own turn of worship and consequently succession to the management of the additional properties would folow the line of the heirs of the dedicator.

(e) Vide Promotha V. Pradyumna—52 I. A. 245.
(f) 39 C. W. N. 1264.

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It is difficult to support this decision on the principles discussed above, which seem to be quite well settled. The testator here did not attach any condition to the gift he made, by way of directing that the management in regard to the additional properties would remain in his own line, and consequently no question of election arose. The shebaiti right again vests in law in the whole body of shebaits, even though for purposes of convenience a division of the turns of worship is permissible. The contribution made by the testator in this case should have been treated as an accretion to and part of the original endowment, and the turns of worship agreed to with regard to the original endowment ought to have been extended to it.

Devolution of shebaitship. Disability of successor by reason of caste, sex, age or other disqualification.

As shebaitship is property, it devolves like any other property according to the ordinary Hindu law of inheritance. If it remains in the founder, it follows the line of founder's heirs ; if it is disposed of absolutely in favour of a grantee, it devolves upon the heirs of the latter in the ordinary way and if for any reason the line appointed by the donor fails altogether, shebaitship reverts to the family of the founder (g). In the matter of appointment of a shebait, the discretion of the founder is unfettered. No Hindu would indeed think of appointing a person as manager of a temple, who is a follower of different religion, but there is nothing in law which prevents him from appointing as shebait, a person of different or inferior caste.

In southern India Sudras are managers of several public temples and it seems that there is no restriction regarding the appointment of a female. The question whether a person is incompetent to succeed to shebaitship by reason of sex, age or any other disqualification has come up for consideration before our courts on more occasions than one. So long as shebaitship was regarded as an office pure and simple, divergent opinions seem to have been expressed by the courts on these points. Now that shebaitship has been definitely held to be property, much of these discussions would have no more than academic value

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(g) See Ashutosh V. Binod—34 C. W. N. 177.

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at present ; and barring exceptional cases arising out of special customs or usages, we may take it that the right of management of an idol follows the same line of succession as any other private property.

Woman's right to succeed to shebaitship.

As succession to shebaitship is governed by the ordinary law of inheritance, it scarcely admits of any doubt that a woman can succeed to shebaitship. The Supreme Court of India has held very recently that shebaitship is 'property" within the meaning of the Hindu Women's Right to Property Act ; consequently in a case to which the Act applies the widow and son of the last shebait would succeed jointly to the shebaiti rights held by the latter. It has been held further that even if the expression 'property' in the Hindu Women's Right to Property Act is to be interpreted as meaning property in its common or accepted sense and is not to be extended to any special type of property which 'Shebaitship' admittedly is, as succession to shebaitship follows succession to ordinary secular property the general law of succession under Hindu Law to the extent, that it has been modified by the Hindu Women's Right to Property Act would also be attracted to devolution of Shebaiti rights (g[1]).

In one of the very early cases on the point (h) which went up to the Privy Council, the right of a female heir to succeed to the shebaitship of an idol was disputed. The endowment in that case was a private one, and their Lordships of the Judicial Committee quoted the following passages from the judgment of the trial Judge with which they apparently agreed. "That the properties in question do not admit of any partition among the cosharers is a fact which must be admitted by me ; but I do not see any reason why a widow of the family should be incapacitated from superintending the service of the gods. It is not urged by the defendants that any such rule has been laid down in the family and that under it the widows have been excluded from the above superintendence ; on the other hand, among the Hindus, persons belonging to no other caste except that of

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(g[1]) Angurbala V. Debabrata (1951) A. I. R. (S. C.) 293.
(h) Radhamohan V. Jadoomonee 23 W. R. 369.

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Brahmins can perform the service of a god, with his own hands, that is worship the idol by touching its person. Men of other castes simply superintend the service of the gods and goddesses established by themselves, while they cause their actual worship to be performed by Brahmins. Thus when persons of the above description can conduct the service of idols in the above mentioned manner, why should not the widows of their family be able to carry on worship in a similar way ?....."

In another case (i) decided by the Calcutta High Court, the matter, it seems, was approached from a different stand-point. There a female plaintiff laid claim to shebaitship of certain Debutter property as heir to her husband who was the last shebait, and one of the questions raised was whether a woman could succeed to shebaiti rights. The learned Judges did not accept the view that females by reason of sex were excluded from succession to shebaitship, but they held nevertheless that having regard to the history of this particular endowment, the plaintiff could not prove affirmatively that succession to shebaitship in the past, was governed by ordinary Hindu law. This decision was affirmed by the Judicial Committee (j) and their Lordships seem to have taken the view that succession to shebaitship would in the first instance depend upon the provisions made in the grant, and failing such directions of the grantor it would be regulated by usage. Unless therefore an usage was proved, according to which devolution of shebaitship would take place according to the ordinary rules of inheritance, these general rules would not apply. On the actual facts of the case the decision can probably be justified, but having regard to the subsequent development of law on the point it could not be stated as a broad proposition of law that the ordinary rules of inheritance would not govern succession to shebaitship unless a usage to that effect is proved to exist. The true view is that the ordinary rules would apply unless a usage to the contrary is established.

(i) Janakee V. Gopal—2 Cal. 365.
(j) 10 I. A. 32.

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It is a custom prevailing in many parts of India, that even a Brahmin woman is not capable of performing certain religious rites associated with the worship of a deity. This disqualification by itself cannot stand in the way of her succeeding to shebaitship. A shebait is not bound to worship the deity personally, and in cases where the founder or shebait does not belong to the twice born castes, the actual worship has always to be performed by employing a Brahmin priest. The position may however be different where the peculiar doctrines of a sect may preclude a woman married into a different sect from performing the duties of the temple or religious institution belonging to the former sect. The disability in such cases arises not because the heir to the last shebait is a woman, but because she having been taken into another family by marriage is not competent to hold the office of the shebait of the religious institution belonging to the family of her birth. This is illustrated by the decision of the Judicial Committee in Mohanlalji V. Gordhanlalji (k). This case arose out of a suit for establishment of a shebaiti right and for possession of a temple belonging to the Ballavacharya Gosains, founded by one Muttuji, the maternal grandfather of the plaintiffs appellants. The defendant respondent resisted the suit alleging that the ordinary Hindu law was not applicable, and that daughter's sons were excluded by custom. The contention of the defendant was given effect to, and it was held that the rule, that all the heirs of the founder succeed to shebaitship, as laid down in Goswamee Sree Greedhareejee V. Raman Laljee (1) was, as there implied, subject to the condition that the devolution in the ordinary line of descent is not inconsistent with or opposed to the purpose the founder had in view in establishing the worship. In the present case the plaintiffs being *Bhats* and not belonging to the *Gossain Kul* were not competent to be shebaits of a Ballava temple where the rites were performed according to Ballava rules which the plaintiffs admittedly could not perform. To allow their claim would defeat the very purpose which the founder had in

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(k) 40 I. A. 97.
(l) 16 I. A. 137.

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view in creating the endowment. Following this principle, in a recent case, the claim of a married daughter of the last shebait to succeed to the office was dismissed on the ground that she had passed out of the family (m). Subject to these exceptions which rather prove the rule, we may take it to be a settled doctrine that a woman is not disqualified by reason of her sex to succeed to the rights of shebait of an idol according to Hindu law. When a woman succeeds as shebait she takes like a Hindu female heir a limited interest in the shebaiti right ; in the sense that after her death, the next male heir of the last shebait succeeds to the office (n).

Can woman succeed to a purely religious or priestly office ? Degraded social position of Archakas amongst the Hindus.

The question has been raised in several cases whether a woman even though not disqualified to succeed to shebaitship can inherit a purely religious or priestly office to which emoluments might be attached. To public temples, particularly in southern India, there are attached hereditary priests who are called Archakas, who hold grants of land of considerable value made in their favour by the founders. As was pointed out by Shesagiri Ayyer, J. in Annaya Tantri V. Ammakka (o), Brahmans who perform worship of deity as hired priests in consideration of money given by another, are considered to be degraded in Hindu Society. Thus the sage Satatapa says "A *vipra* (Brahmin) who performs pooja for the sake of money for a period of three years is known as the Devalaka ; such a person becomes incompetent to participate in the usual *Havya* and *Kavya* rites enjoined on Brahmans".

"A *vipra* who, though he may be well versed in the four Vedas is desirous of getting money, and who performs the worship of the gods for the sake of another will be considered equal to a Chandala." As *Archakas* are thus looked down upon by the Hindu society, it was necessary for the founders to offer liberal grants of land and promises of other perquisites, to induce them to accept the position of priests. These grants of land were intended and in most cases expressed to be from generation to generation. The

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(m) A. I. R. 1949 Pat. 193.—Sankareswar V. Bhagabaty.
(n) Anuragi V. Parmanand—A. I. R. 1939 Pat. p. 1.
(o) 41 Mad. 886 (F. B.).

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question is whether a female descendant who by reason of her sex cannot perform the rites of worship herself could succeed to the office of the Archaka and claim the emoluments attached to the office.

In Sundarambal V. Yogavanagurukkul (p) it was held by Sadasiva Ayyer, J. to be a settled custom that females by reason of their sex are permanently disqualified from performing the duties of an *Archaka* in a *Saivite* temple. It was held further that she cannot inherit the office and enjoy the emoluments whilst at the same time delegating the duties to others.

This decision was overruled by a Full Bench of the Madras High Court in Annaya Tantri V. Ammakka (q), which arose out of a reference made by Shesagiri Ayyar and Napier JJ., disagreeing with the views expressed in Sundarambal V. Yogavanagurukkul (r) and it was held by a majority of the Judges (Sadasiva Ayyar, J. dissenting) that according to the practice and precedents obtaining in the Madras Presidency, a Hindu female is not incompetent by reason of her sex to succeed to the office of *Archaka* in a temple and to the emoluments attached thereto.

In the order of reference Shesagiri Ayyer, J. critically examined the reasons given by Sadasiva Ayyer, J. in favour of the view that female, who by custom was incapable of performing religious rites, should be held incompetent to inherit the religious office.

"It may be assumed" thus observed the learned Judge "that the donors were not over anxious to make hereditary grants to the donees' family without regard to the latter's capacity to perform religious worship ; but the law would not have permitted them to stipulate that the property shall be enjoyed only by those competent to minister in the temple. They must have trusted to chance to see that the descendants of the donees carried on the good work for which their predecessors were given grants. Mr. Justice Sadasiva Ayyer asks, why, if that must be presumed to have been the intention of the donor, should the in-

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(p) 38 Mad. 850.
(q) 41 Mad. 886 (F.B.).
(r) 38 Mad. 850.

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heritance go to persons who by themselves are incapable of discharging their duties. The answer is that courts and even legislatures must trust to the same chance which the founders calculated upon when they endowed the Archaka office. What reason have courts for holding that a reversioner would be a more welcome minister of religion than the Gumasta employed by a widow to perform the services? It would be an ideal to be sought after, if the community interested in temple worship were to be permitted to select on the death of an Archaka, a person competent to fill his place. Even in this view, there is no guarantee that a nominee of the community would be a better Archaka than the proxy of the widow.... Under such circumstances, there cannot be much room for doubt, that society would prefer that the secular rights with the obligations to do or get done the spiritual duties should vest in the line of heirs to whom private property would descend."

Wallis, C. J. who presided over the Full Bench, based his judgment mainly on usage relating to the Archakas as it prevails in the Madras Presidency. "It is not disputed" thus observes the learned Chief Justice "that in this part of India the user in the case of temple *Archakas* is that the office is hereditary and descends in the ordinary course of succession to women who are not themselves competent to perform the duties of the office by ministering in the temple and perform them by deputy.....We should not in my opinion be justified in overruling....the numerous decisions of this court in which the usage has been recognised and enforced, unless its mischievous character had been established beyond all doubt or controversy". This view can be said to be the accepted view in all courts in India. As a matter of fact there is no decided authority earlier than Sundarambal V. Yogavangurukkul (s) where it has been held that a female is not entitled to inherit a priestly office and its emoluments. The weight of authorities is obviously in favour of giving females the right to hold religious office (t). It should be noted that even

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(s) 38 Mad. 850.
(t) See in this connexion Mahamaya V. Haridas—42 Cal. 455 at p. 475.

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according to Sadasiva Ayyer, J. a woman would not be incapacitated from succeeding to shebaitship which involves no performance of religious duties by the shebait personally.

Other disqualifications regarding succession to shebaitship.

As regards other disqualifications which would incapacitate a person from inheriting shebaiti right, it may be stated generally that those physical and mental defects which exclude a person from inheritance under the ordinary Hindu law, would exclude the right to succeed to shebaitship as well. It would be necessary therefore that these grounds of exclusion should exist at the time when the succession opens. A subsequent disqualification would not occasion forfeiture of rights already acquired (u).

Under Hindu law persons who are born blind, deaf or dumb or are devoid of any limb or organ cannot inherit any property. Lunacy to be a ground of exclusion need not be congenital ; it is enough if it existed at the time when the succession opened. Leprosy also excludes a man from inheritance provided it is of a virulent or incurable type (v).

An unchaste wife cannot succeed to her husband's estate, but once the estate has vested in her—which could only be if she was chaste at the time of her husband's death—it cannot be divested by her subsequent unchastity (w). Under the Dayabhag law not only the wife but all other female heirs must be chaste to entitle them to succeed to the property of a male. Under Mitakshara, the disability attaches to the wife alone (x).

All these rules would be applicable to devolution of shebaiti right. A person therefore who was of sound mind when shebaitship devolved upon him would not forfeit his rights by subsequently becoming insane (y). In Vidyapurna V. Vidyanidhi (z) the question arose whether the Mohant of a religious institution would cease to be a Mohant by reason of his subsequent becoming a lunatic. The plaintiff in that

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(u) Vide Nirmal V. Jyoti Prosad 45 C.W.N. 709.
(v) Mulla's Hindu Law 10th Edn. p. 102.
(w) Mulla's Hindu Law p. 100 sec. 96 ; Moniram V. Keri Kolitani—5 Cal. 776 ; 7 I.A. 115.
(x) Mulla's Hindu Law sec. 96.
(y) Nirmal V. Jyoti Prosad—45 C. W. N. 709.
(z) 27 Mad. 435.

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case claimed the headship of a "Mutt" by virtue of an appointment made by a certain authority, on the previous Mohant having been adjudged a lunatic. If the lunacy of the Mohant was a ground of forfeiture of his rights, the plaintiff would succeed in the suit assuming that the person who appointed him had the requisite authority to do so ; but if on the other hand there was no vacancy on account of the lunacy of the Mohant the plaintiff's suit would fail. The trial court held that there was no vacancy by reason of the lunacy of the Mohant and the decision was upheld on appeal by the Madras High Court. The two learned Judges who heard the appeal delivered two separate but concurring judgments in which they elaborately discussed the legal position of the head of a "mutt". For our present purpose, these discussions are not material, but it would be useful to quote the following passages from the judgment of Bhashyam Ayyangar , J. where the learned Judge gives his reasons as to why unlike trustees, a new Mohant cannot be appointed when the existing Mohant became incapable of acting by reason of unsoundness of mind. "I am however of opinion" thus observes the learned Judge "that the head of a Mutt as such is not a trustee in the sense in which that term is generally understood in the law of trusts, and the decision of the question under consideration cannot therefore properly be governed by the principles regulating the appointment of new trustees or by analogies derived therefrom. I may also add that in the case of hereditary trustees in India and other trustees having a beneficial interest in the trust property, the principles of the English law of trusts—embodied in the Indian Trusts Act—as to the appointment of new trustees, when a trustee becomes incapable of acting by reason of unsoundness of mind are inapplicable". This reasoning if I may say so is perfectly sound, but it is somewhat curious that the learned Judge while holding that Mohant does not forfeit his rights by reason of lunacy made a distinction in the case of *Dharmakarta* or manager of an idol, and expressed the opinion that the *Dharmakarta* of a temple would lose his rights in case of lunacy. According to the learned Judge the reason for this distinction is that in the case of temple the ideal person

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is the idol itself while in case of *Mutt* the ideal person is the office of the spiritual teacher which has the same legal status as a corporation sole in English law. A Mahant is not a mere trustee, he has an estate for life in the permanent endowments of the Mutt, and an absolute property in the offerings. It is presence of this personal interest which would distinguish him from a mere trustee under the English law who would lose his office, the moment he is found incapable of discharging his duties. So far as the Dharmakarta of a temple is concerned, the learned Judge observes that he is a mere custodian of the property which vests absolutely in the deity, and as he has no beneficial interest in the endowment his incapacity to perform his duties should work forfeiture of his rights. This expression of opinion is undoubtedly an *obiter* as no question arose in the case as to whether a Dharmakarta would lose his rights if he subsequently became insane, and the actual decision is certainly right to which no exception can be taken. Still it must be pointed out that the opinion expressed by the eminent Judges regarding the legal position of a Dharmakarta cannot be supported in view of the subsequent pronouncement of the Judicial Committee in Vidyavaruthi V. Balusami (a). As the law has been laid down by the Judicial Committee, the Mohant of a Mutt as well as the shebait or Dharmakarta of a temple, are both managers and not trustees in the English sense, and the ideal person in which the endowed property is vested is the institution itself in one case, and the idol in the other. Then again both the Mahant and the shebait have personal interest in the endowed property which depends on usage or terms of the grant. It is this personal interest which certainly distinguishes a Mohant from a mere office holder, but this personal interest is present in the case of shebait as well, and that is why shebaitship has been held to be property. A Division Bench of the Calcutta High Court has now held on a review of all authorities that a shebait does not forfeit his rights by reason of his subsequently becoming a lunatic (b). But if a shebait becomes a lunatic or is otherwise incap-

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(a) 48 I. A. 302.
(b) See Nirmal V. Jyoti Prosad—45 C. W. N. 709.

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able of doing his duties, who is to exercise his functions so long as his disability lasts ? The answer has been given by Bhasyam Ayyangar, J. in the case referred to above. The learned Judge points out that in such cases the proper course for the purpose of securing the due discharge of the spiritual functions of the office, and the management and preservation of the endowment and its income is to provide a suitable agency for the purpose. The learned Judge is of further opinion that when a court of law has already appointed a manager of the lunatic, that manager might take charge of the endowed property on behalf of the lunatic and provide for conduct of necessary worship and religious ceremonies of the institution by appointing persons duly qualified for the purpose.

Shebaitship and change of religion.

Does a change of religion operate as a disqualification in the mater of succession to shebaiti right ? Under the old Hindu law apostasy was certainly a disqualification in the heir and excluded him from inheritance. This was removed by Act XXI of 1856, and with regard to ordinary property the fact that a Hindu has become convert to some other religion does not entail forfeiture of his heritable rights. The question is whether the same principles should apply to devolution of shebaitship as well. Obviously the secular duties of a shebait can be performed even by a Christian or Mahommedan, and as regards spiritual duties the Hindu law allows the shebait to perform them through a proxy or substitute. But even then in the mater of carrying on the worship of a deity, the intentions of the founder have got to be given effect to as far as practicable. A pious Hindu when he establishes a deity cannot possibly conceive of its sheba and puja being carried on under the supervision of a non-Hindu. Usages do exist in almost all Hindu religious institutions and if succession of a non-Hindu shebait is contrary to such usage, it cannot certainly be allowed (c). But when a successor is a Hindu, the mere fact that he belongs to the Aryasamaj and does not believe in idol worship is not material. It

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(c) See in this connection Venkatachalapati V. Subbarayadu—13 Mad. 293.

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is enough if the rites are performed by a duly qualified person (c[1]).

Shebait's right of nominating his successor.

The founder of an endowment can always confer upon a shebait appointed by him the right of nominating his successor. Without such authority expressly given to him, no shebait can appoint a successor to succeed to him in his office. The power of nomination can be exercised by the shebait either during his life-time or by a will, but he cannot transfer the right of exercising the power to another person (d).

Extinction of the line of shebaits.

When the line of shebaits laid down by the founder is extinct, or when the shebait to whom a power of nomination is given, does not exercise the power, the managership reverts to the founder who endowed the property or his heirs (e).

As there is always an ultimate reversion to the founder or his heirs, in case the line of shebaits is extinct, strictly speaking no question of escheat arises so far as the devolution of shebaitship is concerned. But cases may be imagined where the founder also has left no heirs, and in such cases the founder's properties may escheat to the State together with the endowed property. In circumstances like these, the rights of the State would possibly be the same as those of the founder himself, and it would be for it to appoint a shebait for the Debutter property. It cannot be said that the State receiving a dedicated property by escheat can put an end to the trust and treat it as secular property. Some observations occur in the judgment of Muthuswami Ayyer, J. in Mallan V. Purusothoma (f) which would seem to suggest that the Government getting the property by right of escheat can put an end to an arrangement made by the original owners under which a certain property was kept undivided for being used for the worship of a deity. There is however no finding in this case, that the property was actually dedicated to the deity, and from the observations of the learned

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(c[1]) Issur Radhakanta V. Khettra Ghosh (1949) A. I. R. Cal. 253.
(d) Rup Narain V. Junko—3 C. L. R. 112.
(e) Sabitri Thakurani V. F. A. Savi—12 P. 359 ; Jagannath V. Ranjit Singh—25 Cal. 354.
(f) 12 Mad. 287.

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Judge it appears that there was only a personal arrangement between the cosharers under which it was excluded from partition.

Shebaiti right not alienable in law.

Although shebaiti right is heritable like any other property, it lacks the other incident of proprietory right, viz. the capacity of being freely transferred by the person in whom it is vested. The reason is that the personal proprietory interest which the shebait has got is ancillery to and inseparable from his duties as a ministrant of the deity, and a manager of its temporalities. As the personal interest cannot be detached from the duties, the transfer of shebaitship would mean delegation of the duties of the transferor which would not only be contrary to the express intentions of the founder but would contravene the very policy of law. A transfer of shebaitship or for the matter of that of any religious office has nowhere been countenanced by Hindu lawyers.

Sale of shebaitship altogether void.

The leading pronouncement on this point is the decision of the Judicial Committee in Rajah Vurmah V. Ravi Burmah (g). In that case the appellant Rajah claimed the *uraima* right of the Tracharmana Pagoda and its subordinate *chetroms* under an assignment from the four *urallers* of that religious foundation. The assignment in question was dated the 10th of May 1868 and was executed by the four *urallers* in favour of the appellant. It recited that the Pagoda and its dependent institutions belonged to the *urallers* and the latter had incurred debts to the extent of Rs. 46,000/-. As the Rajah paid this sum of Rs. 46,000/- for the satisfaction of these debts, and a further sum of Rs. 10,000/- to the urallers personally, the latter transferred all their rights to the Rajah. The Rajah got possession of the landed properties but could not get certain jewellery belonging to the Pagoda, the claim to which was resisted by the respondent. This led to the institution of the suit. It was held by the Judicial Committee in concurrence with the decision of the courts below that the suit must fail inasmuch as the assignment was void in law and could not create any rights in favour of the

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(g) 4 I. A. 76 ; 1 Mad. 235.

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appellant. An assignment of religious office, for the pecuniary benefit of the holder of the office, was held to be against public policy and contrary to the express intentions of the founder. Such transfer, it was pointed out, would amount to a delegation of delegated authority and being against public policy could not be sanctioned even on the footing of a custom. This decision has been followed in numerous cases all over India, and the propriety of it on the actual facts of the case has never been questioned in any subsequent decision.

The same principle applies to lease and mortgage of a religious office.

It may be noted that in Raja Varma's case, the transfer was by way of sale ; the same principle, it is held, would be applicable when the transaction is by way of lease or mortgage. In Ayancheri V. Acholathil (h) there was a transfer of a right to manage a Malabar temple and its lands by way of lease for a sum of money, and the court pronounced the transaction to be illegal. In Lakshmana Swami V. Rangamma (i) the holder of an office attached to a temple mortgaged his right to the office together with other property and in a suit to enforce the mortgage a compromise was arrived at by the mortgagor who agreed that his right to the office and its emoluments should be sold in satisfaction of the mortgage debt. A decree was passed in terms of the compromise and when the decree was put into execution objection was raised that the compromise being unlawful a decree based on the same was incapable of eecution. This contention was upheld and the High Court dismisesd the application for execution on the ground that the decree was a nullity being passed by the court without jurisdiction. The propriety of this decision is certainly open to doubt. The court which recorded the compromise and passed a decree on the basis of the same had undoubtedly jurisdiction to decide whether the compromise was lawful or not. If it erred in its decision the proper course for the aggrieved party was to challenge it by way of appeal. The executing court had certainly no jurisdiction to go behind the decree. The proposition

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(h) 5 Mad. 89.
(i) 26 Mad. 31.

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of law undoubtedly is that a compromise which directs the sale of a religious office should not be sanctioned by a court.

A compromise which directs alienation of religious office is unlawful and cannot be recorded.

In Sundarambal V. Yoganvanagurukkul (j) there was a suit instituted in respect of half share in the *Archaka* right of a Siva temple ; pending the suit the parties entered into a compromise by which one of the parties alienated, for a pecuniary benefit, a portion of his right to the office in favour of the other party (who was a female) and the latter applied to the High Court to pass a decree in accordance with the compromise. It was held that the compromise was not lawful and no decree should be passed in accordance with it under Order 23 Rule 3 Civil Procedure Code. Sadasiva Ayyar, J. in course of his judgment reiterated the proposition of law enunciated by their Lordships of the Judicial Committee that "an alienation of a religious office by which the alienor gets a pecuniary benefit cannot be upheld even if a custom is set up sanctioning such alienation."

Involuntary alienation of shebaiti right is invalid.

In Srimati Mallika Dasi V. Ratanmoni (k), a shebait mortgaged his *Pala* or turn of worship in favour of a stranger. In a suit to enforce the mortgage it was held that the mortgage was illegal and the mortgagor was not precluded from raising the question by way of defence in the suit. If private alienation of religious office is bad, involuntary alienation must be regarded as still worse. This has been held from very early time by the Calcutta High Court (l). The main reason put forward is that the purchaser of the rights of the shebait may be of different religion and may not be competent or disposed to perform the services, and thus the object of the endower in creating the endowment may be defeated and rendered null and void.

Exceptions to the general rule against alienation of shebaiti right.

Though the general proposition laid down in the cases referred to above has never been disputed, yet there are decisions of different High Courts in India, in which the rule against alienation of shebaiti right has been relaxed to some extent by reason of certain

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(j) 38 Mad. 850.
(k) 1 C. W. N. 493.
(l) See Jaggannath V. Krishna Pershad—7 W. R. 266 ; Dabo Misser V. Srinibash—5 B. L. R. 617 ; Kali Charan V. Bangshi Mohan, 6 B. L. R. 727.

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special circumstances. These circumstances may be conveniently grouped under three heads : (1) Where the transfer is not for any pecuniary benefit, and the transferee is the next heir of the transferor or stands in the line of succession of shebaits and suffers from no disqualification regarding the performance of the duties. (2) When the transfer is made in the interests of the deity itself and to meet some pressing necessity. (3) When a valid custom is proved sanctioning alienation of shebaiti right within a limited circle of purchasers, who are actual or potential shebaits of the deity or otherwise connected with the family. I propose to take up these three things one after another.

Alienation in favour of next shebait or one in the line of succession or to a coshebait.

On the first point, there seems to be some divergence of judicial opinion. The Bombay High Court has definitely decided that an alienation of shebaiti right is valid if the alienee stands in the line of succession of shebaits and is not disqualified to discharge the duties.

The leading decision on this point is that in Mancharan V. Pransankar (m) where reliance was placed on an earlier decision of the same High Court in Sitaram Bhat V. Sitaram (n). In Mancharan V. Pransankar (o) the alienation was of the right to worship a goddess and receive a share of the offerings by the holder of the office to his sister's son, who was in the line of succession. The alienation was upheld. Mr. Justice Melville in delivering judgment points out that two considerations which are urged against the validity of such alienation are : (1) that such transfer is against the presumed intention of the founder, and (2) that the alienee might be a person unwilling or incompetent to perform the spiritual services. Neither of these grounds apply when the transferee is in the line of succession of shebaits and suffers from no disqualification regarding the performance of the duties. In the earlier case of Sitaram Bhat V. Sitaram Ganesh (p) the transfer was to the grandchildren of the holder of the office,

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(m) 6 Bom. 298.
(n) 6 Bom. H. C. R. 250.
(o) 6 Bom. 298.
(p) 6 Bom. H. C. R. 250.

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who were eventually to succeed to the transferor as his heirs, and the grandfather did not really do more than relinquish his interests in their favour. There was also evidence of previous dealings with the office of a similar character which was relied upon as indication of an usage justifying the alienation. The view of the Bombay High Court as laid down in Mancharan's case has not been accepted in its entirety by the other High Courts in India.

Apart from any question of custom the Madras High Court recognises only one exception to the rule against alienation of religious office, and that is where the transferee is the sole and immediate successor of the holder of the office who makes the transfer. In Kuppa Gurakal V. Dorasami (q), there was sale of religious office to a person who was not in the line of office, but was otherwise qualified to perform its duties. This was held to be invalid. "It is argued" so runs the judgment "that in the present case the alienee is of the same caste and sect as the family of the alienor, and that no objection as to fitness to perform the worship exists in this case. But we are not disposed to hold that this of itself will validate such an election. To hold so would lead to public mischief in inducing needy incumbents of hereditary offices who desired to sell them to give a dishonest recognition to qualifications, which, in fact, were not the qualifications demanded by the nature of the office".

In Narayana V. Ranga (r) the office of a pujari was hereditary in the plaintiff's family, the last incumbent being the plaintiff's uncle. In 1880, he transferred the office to plaintiff's father, in succession to whom the plaintiff claimed the right. The High Court called for a finding as to whether the plaintiff's father was the sole heir and next in succession to the last shebait. The finding was that he was not the sole heir, and he had three other brothers who were the immediate heirs along with him. On this finding the court held that the transfer of the office to the plaintiff's father was invalid. "Unless

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(q) 6 Mad. 76.
(r) 15 Mad. 183.

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the alienee is the sole heir" thus observed the court "the alienor might be under the temptation to make the office the subject of bargain and thereby defeat the intentions of the founder". This view has been affirmed in subsequent cases, and the opinion of the Madras High Court definitely is that in the absence of a special usage, the alienation of a religious office would not be valid, if made in favour of any person other than the sole and immediate heir of the transferor (s).

So far as the Calcutta High Court is concerned the decisions are not quite uniform, but the trend of authorities seems to be more in favour of the Madras doctrine than that of the Bombay High Court. In one of the earliest case of the Calcutta High Court (t) one of the members of a joint Hindu family who was a joint shebait of a deity transferred his turn of worship together with its emoluments to a person who was a stranger to the family but being a Brahman was not incompetent to perform the services of an idol. The alienation was held to be invalid. "It is of the essence of a family endowment of the Hindus" thus observed the learned Judges "that no stranger shall be permitted to intrude himself into the management of the endowment". The deed, it was said, could be valid during the life-time of the assignor, as the latter was competent to carry on the worship so long as he was alive, through a proxy, but it could not be operative after his death. In Gobind Kumar V. Debendra K. Roy (u) the ante-alienation doctrine was applied in all its rigour and a shebait was held incapable of transferring his rights even to a co-shebait or to one who was next in succession to the transferor. The point was considered again in Nirod Mohini V. Shibdas (v) where the owners of a turn of worship of an idol transferred the same to a co-shebait, the latter being on account of his place of residence and other advantages, better able to perform the sheba than the transferors. It was held that in view of the special circumstances of the case

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(s) Muthu Kumar Shami V. Sabbaraya—A. I. R. 1931 Mad. 505.
(t) Ukoor Das V. Chander Sekhar Das—3 W. R. 152.
(u) 12 C. W. N. 98.
(v) 36 Cal. 975.

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viz. (1) that the alienation was not for pecuniary gain (2) that it was in favour of a co-shebait who had more interest in the worship than any body else; and (3) that the arrangement was clearly beneficial to the deity, the transaction could be upheld. The learned Judges in arriving at their decision relied upon the pronouncement of the Bombay High Court in Mancharan V. Pranshankar (w) and certain observations occurring in Khetra Chandra Ghosh V. Haridas (x) and Rajeswar Mullick V. Gopeswar Mullick (y). In course of his judgment in Mahamaya V. Haridas (z) it was observed by Mookerjee, J. that "there is authority for the proposition that alienation of a religious office may be validly made in favour of a person standing in the line of succession and not disqualified by personal unfitness" and in connection with it the learned Judge referred among others to the cases of Mancharan V. Pranshankar (a) and Nirod Mohini V. Shibdas (b) referred to above. The observation could not have any higher authority than a mere *obiter*, as it was not necessary for decision of the case, where the point for consideration was whether a custom for transfer of *Palas* of the Kalighat temple within a limited market was established by evidence and if established was valid in law. In Mancharan V. Pransankar (c) no question of custom was raised and the point for decision was whether under the general rules of Hindu law, there could be a transfer of religious office in favour of one who stood in the line of succession of the holder of the office. It is to be noticed that in the subsequent case of Radharani V. Doyal (d) the observations of Mr. Justice Mookerjee point to the conclusion that the alienation of shebaitship in favour of one who stands in the line of shebaits can be supported only on the footing of a custom. Strictly speaking there is no specific authority of the Calcutta High Court,

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(w) 6 Bom. 298.
(x) 17 Cal. 557.
(y) 12 C. W. N. 323.
(z) 42 Cal. 455.
(a) 6 Bom. 298.
(b) 36 Cal. 975.
(c) 6 Bom. 298.
(d) 33 C. L. J. 141

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where apart from any custom, a transfer of shebaitship to one in the line of shebaits has been held to be valid (d[1]). Of course when the transferee is the sole and immediate heir of the transferor, the transfer can be looked upon as a surrender of the office in favour of the next heir, and such surrender does not offend either against the presumed intentions of the founder or the general policy of Hindu law. A shebait like a trustee cannot delegate his duties to another person, but he is not bound to accept his office, and if he renounces his duties which he always can, then even if the renunciation be in the form of a transfer in favour of the next heir, it can be held valid in law. This is the view of the Madras High Court, and this is exactly the view taken by Mr. Justice Page in Nagendra Nath V. Rabindra (e). A transfer by one shebait to the remaining shebaits may also be justified on the same principle. A transfer by one of the shebaits of his rights in favour of the grantor can scarcely be supported and has been expressly held to be invalid in a Bombay case (f). It has been pointed out by the learned Judges in that case, that if any one of the shebaits intends to get rid of his duties, the proper thing for him to do would be to surrender his office in favour of the remaining shebaits. When the transfer is in favour of the remaining shebaits, or the sole and immediate heir of the transferor, it can safely be said that no policy of Hindu law is likely to be affected, nor can such transaction be held to be against the presumed intentions of the founder. Within these limits therefore the alienation of a religious office can be legally permitted. It goes without saying that whatever the form of transfer may be, it cannot be by will, for nothing which the shebait has, can pass by his will which operates only at his death (g).

Alienation on grounds of necessity or benefit to the deity.

The doctrine that alienation of shebaitship can be upheld, if it is justified by necessity or the deity is benefited by such transfer is sought to be supported on the basis of certain decisions of the Calcutta

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(d[1]) See the cases reviewed in the recent decision of Baneswar V. Anath—A.I.R. 1951 Cal. 490.
(e) 53 Cal. 132.
(f) Raghu Nath V. Purnanand—47 Bom. 529.
(g) Rajeswar V. Gopeswar—35 Cal. 226.

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High Court. A careful examination of the cases however shows that they are of doubtful authority, and are to a great extent based upon misconstruction of certain pronouncements of the Judicial Committee.

The earliest Calcutta case where the doctrine of benefit to the deity was assigned as a ground in support of alienation of shebaiti right is that of Khettra Chandra Ghosh V. Hari Das (h). The facts of this case are rather peculiar. It was a case of private or family endowment, and the Ghoshes who were the shebaits of the deity made over the idol together with the endowed property to the plaintiff's predecessors, the reason being that the Ghoshes were unable to carry on the worship of the idol with the income of the Debutter and the plaintiff's predecessors were willing and able to take charge of the deity and its worship. The question was whether the plaintiff's predecessors acquired a valid right to the endowment. The question was answered in the affirmative by the courts below, and the High Court in second appeal agreed with that decision and dismissed the appeal. Banerjee, J. in delivering judgment pointed out first of all that although sale of an idol was prohibited in Hindu law, a gift was not. That question however was held to be immaterial, and the learned Judge held the transfer to be valid mainly on the ground that the arrangement was for the benefit of the idol. He relied upon the decision of the Judicial Committee in Prosanna Kumari V. Golap Chand (i) where their Lordships enunciated the proposition of law that a shebait must, of necessity, be empowered to do whatever may be required for the service of the idol and for benefit and preservation of the property. Reliance was also placed upon the observation of the Judicial Committee in Doorga Nath V. Ram Chandra (j) "that in case of land dedicated to a family idol the consensus of the whole family might give the estate another direction". "If that is so" thus observes Banerjee, J. "we see no sufficient reasons why the arrangement made in this case in 1254, by the shebaits who were all the members of the Ghosh

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(h) 17 Cal. 557.
(i) 14 B. L. R. 450 ; 2 I. A. 145.
(j) 2 Cal. 341.

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family, for the purpose of preserving the property of idol, and preventing the discontinuance of its worship should not be held to be valid."

At the time when this case was decided, the observation of the Judicial Committee in Doorga Nath V. Ram Chandra (k) was supposed to be an authoritative statement of law, whereas, it is scarcely disputed now that it cannot rank higher than a mere *obiter*. At any rate, the decision of Banerjee, J. if it can be supported at all, can be supported only on the ground, that the consensus of all the members of the family gave the endowment, not a secular, but a different turn. One must say however that the decision in Prosanna Kumari V. Golap Chand (l) was thoroughly misapplied. As has been pointed out by Page, J. in the subsequent case of Nagendra Nath V. Rabindra (m), the rule of necessity formulated in a series of decisions of the Judicial Committee extends only to an alienation of the temporalities of the idol. It does not and cannot apply to an alienation of the spiritual rights and duties, the fulfilment of which is the primary function of the shebait. In the words of Page J. the doctrine is "a heresy which has crept into the Hindu law" and ought to be exposed and eradicated. The next authority where the doctrine of necessity or benefit to the deity seems to have been adverted to, is the case of Rajeswar V. Gopeswar (n) which was decided by a bench of three Judges consisting of Maclean, C. J., Mitter and Woodroff, JJ. The actual decision in the case was that a hereditary shebait cannot alienate his office by will, and Maclean, C. J. in course of his judgment disapproved of the law laid down in Mancharan V. Pransankar (o). The learned Chief Justice stressed the distinction between a will and a transfer inter vivos, and pointed out that there was no interest in the shebait which could pass by will. Mitter, J. agreed with this view and further observed in his judgment, that a shebait has no power of alienation except for necessity or benefit to the Thakur, and no such

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(k) 2 Cal. 341.
(l) 14 B. L. R. 450 ; 2 I. A. 145.
(m) 53 Cal. 132.
(n) 35 Cal. 226.
(o) 6 Bom. 298.

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necessity or benefit was proved in the case. Neither the Chief Justice nor Mr. Justice Woodroff touched this point at all. As the judgment of Mitter, J. is extremely short, and no reference was made to any of the decided authorities, it is difficult to say what exactly the learned Judge had in mind. It may be, that he too overlooked the distinction between the temporalities of the idol and the spiritual office and its duties ; at any rate as the decision of the court was not based on that ground, not much value could be attached to the incidental observation of one of the learned judges comprising the bench. This decision of Mitter, J. was referred to and relied upon in Nirod Mohini V. Shibdas (p), which I have discussed already. The facts of that case are somewhat different ; there the alienation of shebaitship was made in favour of a co-shebait who was better able to perform the sheba than the transferors themselves. The learned Judges, it seems, were greatly influenced by the decision of the Bombay High Court in Mancharan V. Pranshankar (q) and benefit to the deity was put forward as a mere additional reason in support of this decision. As I have said already, the right view has been taken by Page, J. in Nagendra Nath V. Rabindra (r), that the entire doctrine of benefit to the deity as a justification for alienation of the office is based upon a misconception of some of the pronouncements of the Judicial Committee. Reference may be made in this connection to the case of Nirmal Chandra Banerjee V. Jyoti Prasad (s), where under somewhat peculiar circumstances the transfer of his rights by a shebait was held to be valid. Under the terms of the endowment in this case the shebait had the right to nominate his successor. He did nominate his successor and then relinquished his office taking some monetary help from the appointee who was left in charge of the Debutter. The learned Judges of the High Court held that the transfer was not by way of a sale and although the shebait received pecuniary assistance from the

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(p) 36 Cal. 975.
(q) 6 Bom. 298.
(r) 53 Cal. 132.
(s) 42 C. W. N. 1138.

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appointee, that was not the consideration for the transfer. As in the circumstances of the case the appointment was conducive to the interests of the idol, it was held to be valid. The propriety of this decision is extremely doubtful. It is true that under the terms of the grant the shebait was given the power of nominating his successor. That normally contemplates the nomination of a person who was to succeed to the office after his death. But even assuming that such nomination was permissible as a preliminary to the shebait's contemplated retirement from office, the relinquishment of his office coupled with taking a substantial sum of money from the person appointed looks very much like the sale of the office. In any view, the question of the deity being benefitted or not by this arrangement, does not appear to be at all relevant.

Alienation of shebaiti right on footing of custom.

The last question is whether a relaxation of the rule against alienation of shebaiti right is permissible on the footing of a custom. A valid custom, if it is proved to exist, would certainly override the rules of general law. In order that a custom may be valid, it must have all the four essential attributes laid down by Tindal, C. J. in Tyson V. Smith (t) *to wit* firstly, it must be immemorial, secondly it must be reasonable, thirdly it must have continued without interruption since its origin, and lastly it must be certain in respect of its nature generally as well as in respect of the locality where it is alleged to obtain and the persons whom it is alleged to affect. As has been said above, the sale of a religious office to an outsider, has been pronounced to be void altogether, and as it is opposed to public policy, no custom to the contrary could validate it in law. In other words, even if such custom has all the other attributes, it would lack the attribute of reasonableness, without which it could not be enforced in law.

In the case of Mahamaya V. Haridas (u) the question of custom in respect to alienation of religious office was elaborately considered by the Calcutta High Court and Mookerjee, J. in course of his judg-

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(t) 9 Adx. E. 406.
(u) 42 Cal. 455.

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ment explained what is meant by unreasonableness in regard to a custom. The mere fact that a custom is against the general law is not sufficient to condemn it as unreasonable, since all customs involve some inconsistency with ordinary rules of law. The reason referred to in the rule, that a custom should be reasonable, is not, as the learned Judge explained, every unlearned man's reason but artificial and legal reason warranted by authority of law. In Mahamaya V. Haridas the point in dispute was the transferability of *Palas* or turns of worship in the celebrated Kalighat temple. It was proved by evidence, that during a period of 90 years at least, the Palas of Kalighat temple had been sold, mortgaged, leased and were the subject matter of partition and devise, though in a limited market which those alone could enter who were qualified to become shebaits by birth or by marriage. The time when the custom originated was not known. In these circumstances, it was held that the custom was valid in law, and could not be regarded as unreasonable.

It is difficult to lay down any hard and fast rule, regarding the validity of particular custom in respect to alienation of religious office. Each case would have to be decided on its own merits. As a practical rule it can be stated that alienation of religious office can be justified on the footing of a custom, provided it does not offend against the policy of the Hindu law of endowment, and the alienation is confined to such persons, who are either actual or potential shebaits according to the scheme of the founder. In Jogesh Chandra V. Dhakeswari (v) a custom was set up under which the shebaits of a private temple could transfer their Palas or turns or worship to anybody subject to this restriction that the transferee must profess the Hindu religion and belong to one of the three higher castes. It was held by the Calcutta High Court, that even if such custom was proved, it was bad and unreasonable being prejudicial to the interests of the deity, opposed to the presumed intention of the founder and embarrassing to good management of the properties of

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(v) 45 C. W. N. 809.

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the endowment. A transfer of the right of management for consideration and in favour of a stranger can never be validated by custom (w).

A question arose in a later case (x) whether the *Palas* of Kalighat temple which were saleable in a limited market could be attached under the provision of Order 38 Rules 5 and 6 of the Civil Procedure Code. The question was answered in the affirmative. Difficulties might undoubtedly arise if such Palas are put up to sale in execution of a Civil Court's decree. The bidders may not be the persons, in whose favour private alienation is allowed, and if the sale is restricted to bidders of a particular class only, other inconveniences may arise (y). The proper course in such cases, I think, would be to follow the procedure indicated by the Judicial Committee in Nawab Bahadur of Murshidabad V. Karnani Industrial Bank Limited (z), and appoint a receiver in respect of the income of the shebait with reference to the Palas held by him. Even when a property is not liable to be attached and sold by reason of any provision of law, a receiver can always be appointed to liquidate a decree from the profits of the property (a).

Partition of shebaiti right.

The only other point that requires consideration in this chapter is, whether the rights and duties of the shebait are divisible when there are more shebaits than one. The shebaits like trustees must act jointly and when there are more than one shebait the office vests in them collectively. *Prima facie* the office of a temple manager is neither alienable nor divisible, but customs have undoubtedly grown up in many places, which sanction such partition as can be had of such property by means of performance of the duties of the office and the enjoyment of emoluments by the different shebaits in rotation. It must always be remembered that though some sort of division among the shebaits *inter se* may be and are allowed on grounds of convenience, yet the shebaits can only remain one body in the eye of law. The deity

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(w) Bhagawan V. Narayan—A. I. R. 1946 Pat. 27.
(x) Haridas Halder V. Charu Chandra—37 C. W. N. 978.
(y) Vide Ram Saran V. Iswar—17 Pat. L. Times 77.
(z) 58 I. A. 215.
(a) Vide Monohar Singh V. Hakim—150 I. C. 665.

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is represented by all of them acting together, and no one shebait can be said to represent the idol in part or to possess any interest in any fractional share of the idol's property (b).

It is now settled by the decision of the Judicial Committee in Ramanathan V. Murugappa (c) that when the management can, without detriment to the trust, be held by turns, it is open to the shebaits to agree to do so in such order as they think proper. If in order to avoid confusion, or any unseemly scramble, the parties interested arrange themselves for the due discharge of the functions belonging to the office, in turn or in some other settled order of sequence, there is no breach of trust in such an arrangement nor any improper delegation of the duties of a trustee. The position however seems different if the shebaits themselves cannot agree as to how their functions are to be divided, and the question arises in such cases, whether any one or more of them can, in the absence of an agreement, come to the court and pray for a partition of the shebaiti right. Certain old decisions of the Calcutta High Court are frequently referred to in this connection in support of the proposition that in such circumstances the court can pass a decree directing that the shebaiti right might be exercised in rotation by the different shebaits.

In Anandmoyi V. Boykuntha (d) the question arose in regard to some joint place of worship and sacrifice. The judgment does not show whether there was a Debutter endowment proper, or a dispute about the rights of the shebaits. The court held that places of worship and sacrifice are indivisible but that the parties, unless they agreed to a joint worship, might have the right of worshipping by turns, and this right was declared by the decree. In Ram Sundar V. Tarack Chandra (e) which is the next case in order of time, the primary question for decision was the removal of an idol. The High Court agreed with the views of the court below that the idol could be removed by the plaintiff to his own house at Khatra, and to

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(b) See Iswar Lakhi Durga V. Surendra—45 C. W. N. 665.
(c) 33 I. A. 139.
(d) 8 W. R. 198.
(e) 19 W. R. 28.

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keep it there during his turn of worship. The High Court pointed out further that the court below, before making any declaration regarding the plaintiff's right of removal, should define the period during which the plaintiff was entitled to worship. In neither of these cases, did the question directly arise as to whether a joint shebait was entitled as a matter of right to demand a division of the shebaiti right. In the third and the last of the series which is that of Nitta-kanta V. Neerunjan (f) the point seems to have been raised and considered. The question was whether the right of worship of an idol could be made the subject matter of partition. The question was answered in the affirmative and Couch, C. J. in course of his judgment observed as follows :—"We think that the reasons for which it has been held that one of several joint owners of a property is entitled to a partition, apply to this case. The circumstance that it is a right to perform the worship of the idol, is not one which deprived any of the joint owners of the right to a partition and compels the court to say that they shall be obliged to perform the services jointly and to undergo the many inconveniences which might arise from such a state of things". It was held that to entitle the plaintiff to a division of the right of worship it was not necessary that there should be an agreement binding upon the parties that there should be this division. It was also not necessary that there should be quarrels and disputes between parties to justify the court in making a decree for partition. This was followed by the Bombay High Court in Simba V. Rama (g) and it was held that a suit would lie in a civil court for declaration of the plaintiff's right to officiate in alternate years as priest in a temple and receive the offerings to the idol. All these cases were considered and discussed by the Allahabad High Court in Sir Raman Lalji V. Gopal Lalji (h). It was held, that the right as joint trustees to the management and superintendence of worship at certain temples—when none of the trustees had any personal interest in the temples or the income thereof—could

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(f) 22 W. R. 437.
(g) 13 Bom. 548.
(h) 19 All. 428.

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not be made the subject of partition by a civil court ; that is to say a civil court is not competent to grant a decree declaring that each of such trustees in rotation should for a definite period exercise exclusively the rights of management and superintendence. In the opinion of the learned Judges, if the managers have any personal interest in the management of the temple, and there is a question of shares in the emoluments, it might be said that there is a dispute as regards property and the civil court would be competent to direct division in such ways as it thinks proper. But where the trustees have no pecuniary interest in the subject matter of the trust, none of them can approach the court and ask for a mere partition of their duties ; they must discharge their duties jointly as directed by the founder. This decision was followed by the same High Court in the subsequent case of Puranmal V. Brijlal (i).

You would remember, that usually under the terms of the grant, or on the basis of custom the shebaits or managers do enjoy a personal interest in the endowment. In the majority of cases therefore even according to the views of the Allahabad High Court, a division of the shebaitship could be demanded by one or more shebaits. It is only in these exceptional cases where shebaits have duties merely and no personal interest in the endowed property that the strict rule of the Allahabad High Court would apply.

(i) 39 All. 651.

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LECTURES VI & VII.

Administration of Debutter ; rights, duties and powers of a shebait.

In the last lecture I have described to you the essential characteristics of a shebaiti right, the mode in which it devolves and the extent to which it is capable of being divided and alienated. I shall now discuss in details the rights and duties of a shebait in relation to the Debutter Endowment ; for it is with the rights and obligations of the shebait—his powers and disabilities—that the administration of the Debutter is inseparably connected. The ideal personality of the deity, as said above, is linked up with the natural personality of the shebait and it is through the agency of the latter that the Debutter estate is managed and the deity receives its services as provided by the founder. As the ingredients of both office and property are blended in the shebaiti right and a shebait combines in himself a fiduciary position as well as that of the holder of an office or dignity, his rights and duties are in a sense mixed up together ; and in fact the rights which the shebait enjoys are necessary for the most part to enable him to discharge his duties properly. In the language of Sadasiva Ayyer, J. the rights of a shebait are really appurtenant to his duties and it is not the duties that are subordinate to or appurtenant to his rights (a).

The duties of a Shebait.

The duties of a Shebait are both spiritual and temporal. "Sheba" literally means service and whenever an image is set up, a Shebait is necessary to render services to the deity. It is the paramount duty of the shebait to take the image into his charge or custody ; he must see that the idol is washed and fed, and clothed and tended properly and that due provision for its worship is made (b). When the shebait is himself the Archaka, the pujas have also to be performed by him. Otherwise it is not necessary that

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(a) Sunderambal V. Yogavanagurukkul—38 Mad. 850.
(b) Per Page, J. in Nagendra V. Rabindra—30 C. W. N. 389 at p. 396.

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the shebait should conduct the worship himself ; he can appoint a priest for the purpose ; but the responsibility always is his to see that the religious ceremonies are properly performed. There are usages in certain religious establishments that the food (Bhog) that is offered to the deity must be cooked by persons belonging to particular families or by the head of the institution himself ; and in some cases, particularly in public temples, none but persons affiliated to particular religious sects are entitled to touch, annoint or decorate the idol. When such usages exist, they would undoubtedly have to be observed scrupulously.

Custody of idol and the right of removal.

The custody of the idol is always in the Shebait. If the idol has no temple or residence of its own, it is for the Shebait to decide how it should be housed or located and the right of custody would normally carry with it the right of removal. When the idol has no fixed place of residence and there are a number of Shebaits who by mutual agreement are entitled to worship the deity by turns, any one of the Shebaits can remove the idol to his place of residence during his turn of worship provided he reconveys it to the place from which it was taken as soon as his period of worship expires (c). If the deity has a residence of its own and there are more shebaits than one, difficulty sometimes arises regarding the possession of the Thakur Bari. Neither the deity nor any place of worship is susceptible of partition (d). In case of partition of the family property amongst the cosharers, the place of the deity should be kept undivided and possession of it may be given to the senior member of the family, liberty being given to the other members to have access to it for the purposes of worship (e). In Promotha V. Pradyumna (f), the question arose as to whether one of the three brothers, who were joint Shebaits of an idol located in a house built by a previous Shebait, was entitled to remove the deity to his own house during his turn of worship. It was held by the Judicial Committee

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(c) Ramsundar V. Tarrack—19 W. R. 28.
(d) Vide Manu Ch. IX. V. 219.
(e) Damodar Das V. Uttamram—17 Bom. 271.
(f) 52 I. A. 245.

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that the idol could not be treated as a chattel and with regard to location the will of the idol expressed through its proper representative should be respected. "If, in the course of a proper and unassailable administration of the worship of the idol by the Shebait", thus observed their Lordships, "it be thought that a family idol should change its location, the will of the idol itself expressed through his guardian must be given effect to. This is in accordance with what would appear to be the sound principle of the position and it is further in accord with the authority on the subject". The case was remitted to the court below in order that the idol might appear by a disinterested next friend to be appointed by the court.

This was a case of a family idol and the Judicial Committee held that all the members of the family including the female members who have the right of worship would have a say in the matter as to where the deity should be located. In case of an idol in a public temple, the position would seem to be that the Shebait would not be able to remove the deity if the majority of the worshippers object to it (g). It was held in a Madras case that the court would not interfere where a removal of a public idol was found to be beneficial to the community at large and was favoured by the general body of devotees (h).

Shebait to use reasonable care.

The Shebait, as said above, is entitled to possession and custody of the Debutter estate. In fact, it is his duty on acceptance of the office to acquaint himself without delay with the nature and circumstances of the endowed property, and to take steps to get in debts due to the Debutter or other funds invested in insufficient securities. Shebaits are not insurers and except where any particular duty has been imposed upon them by the deed of endowment, they are only bound to use such diligence and care in the management of the Debutter estate as a man of ordinary prudence and vigilence would use in the management of his own affairs (i). If, however, by reason of his negligence or default in proceeding against the debtor in proper time a loss occurs to the Debutter

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(g) Hari V. Antaji—44 Bom. 466.
(h) Venkatachala V. Sambasiva—52 Mad. L. J. 288.
(i) Brice V. Stokes—2 W. & T. 633.

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estate, he would be bound to make good the loss (j). These are the duties of a trustee under English law and the position of the Shebait is almost identical in these respects.

Shebait not entitled to any remuneration.

Like the trustee in English law, a Shebait has to act gratuitously and he cannot charge the Debutter estate for any remuneration on account of the time and labour he spends over his affairs. The position would certainly be different if there is a provision in the deed of dedication to that effect, or in the absence of any deed of endowment there is a usage sanctioning such remuneration to the Shebait. The law is well established that in the absence of any provision in the deed of dedication or any usage to that effect, a Shebait has no right to take any portion of the income of the Debutter estate nor even the surplus that remains after meeting the expenses of the deity (k). In this income would be included not merely the rents and profits of the Debutter property but the offerings which are made to the deity by its devotees. As a matter of fact however, such provisions usually occur in the deed of dedication and where no document exists "in almost every case he is given the right to a part of the usufruct, the mode of enjoyment and the amount of usufruct depending upon usage or custom" (l). In fact, it is entirely consistent with Hindu ideas to give the Shebait some sort of personal interest in the endowment, whatever its exact nature might be (m).

If the deed of endowment provides as to what part of the usufruct of the endowed property would go to the shebait as his remuneration, no difficulty arises. I have already told you that in a case which went up to the Privy Council (n) the founder provided that half of the income should be applied for temple purposes and the other half would be enjoyed by the shebait ; and the Privy Council said that as the income was not very large, such provision was quite natural and did not affect the validity of the

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(j) Thackersey V. Hurbhum—8 Bom. 432 at p. 465.
(k) Vide Monohar V. Bhupendra—60 Cal. 452. at p. 478.
(l) Vide Vidyavarati V. Balusami—48 I. A. 302.
(m) Monohar V. Bhupendra—60 Cal. 452.
(n) Jadu Nath V. Thakur Sitaram—44 I. A. 187.

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endowment in any way. When there is no deed, obviously we have only to look to customs and usages in particular religious institutions for the purpose of finding out whether the shebait can retain any portion of the income of the Debutter property for his own personal use.

Shebait's right to the offerings.

As said above, the income of the Debutter property would include the offerings which are given to the deity by the worshippers. In various public temples which are resorted to by a large number of persons, these votive offerings constitute a substantial portion of the income of the deity and cases have not infrequently come up before our courts of law where the shebaits or Archakas have laid claims to these as their own personal property.

In the well known Dakore case (o) the plaintiffs as parties interested in the worship of God Sri Ranchodji brought a suit *inter alia* for making the defendants who were Sevaks of the temple, accountable for the numerous offerings consisting of cash, ornaments, clothes and other articles which were made to the deity by thousands of pilgrims on every full moon day. The defence was that the defendants were the owners of the idol and the idol's properties and consequently were not accountable for the offerings which they collected at the shrine. This contention was negatived by the High Court and it was held that the Sevaks were not the owners of the offerings and they were responsible for their due application to the purposes of the foundation. In course of his judgment West, J. observed as follows : "It is indeed a strange if not wilful confusion of thought by which the defendants set up the Sri Ranchod Raiji as a deity for the purpose of inviting gifts and vouchsafing blessings, but as a mere block of stone, their property for purpose of their appropriating every gift laid at its feet". The Hindu law nowhere says that the offerings become the property of the shebait or Archaka and can be squandered away by him or devoted to purposes foreign to the endowment. The position in law consequently is that the offerings that are made to a deity do become the property of the

(o) Manohar Ganesh V. Lakhmiram—I. L. R. 12 Bom. 247.

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deity and the shebait or Archaka who claims the right to any share in them must prove affirmatively his right by evidence of usage (p).

The only exceptions to this rule—and these are exceptions more apparent than real—exist when an idol is set up temporarily for worship or where the offerings are of a perishable nature. When an image is set up temporarily for a particular purpose, no endowment in the real sense of the word is created, and such image is more or less in the nature of a chattel which is owned by the person who sets it up. In Girijanund V. Sailajanund (q) where the question raised related to the right of the head priest or *Ojha* of the celebrated Baidyanath temple to the offerings or *Charaos* made to the deity, Banerji, J. observed as follows : "When an idol is set up temporarily for worship, or where the offerings are of a perishable nature, such as articles of food, the priest in attendance, as the nearest Brahmin available, generally appropriates the offerings; and the same is the case where the idol itself is the private property of the priest. But where, as in this case, the idol is an ancient one permanently established for public worship and the offerings are generally of a more or less permanent character, being coins and other metallic articles, in the absence of any custom or express declaration by the donor to the contrary, they are, as they ought to be, taken to be intended to contribute to the maintenance of the shrine with all its rights, ceremonies and charities and not to become the personal property of the priest." Regarding the question of a custom as to the right of the head priest to appropriate the surplus, his Lordship observed as follows : "The purposes again to which they (offerings) are required to be appropriated in the first instance, that is, the trust with which they are said to be charged, are of an indefinite character and may exhaust them completely and the only definite right which the Ojha seems to have in them is to maintain himself and the dependent members of his family out of them. Such being the case, it would be reversing the order of things to say that the offerings constitute the property of the Ojha

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(p) See Kalayana V. Kasturi—20 M. L. J. 490.
(q) 23 Cal. 645.

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ADVANCEMENT OF LEARNING
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subject to certain religious trust, when the correct view to take is that they constitute the property of the idol subject to certain rights of the Ojha." The exact nature of the rights of the Ojha in the Baidyanath temple to the offerings made to the deity again came up for consideration in Shailajanunda V. Umeshanunda (r) and it was held by Harrington and Mookerjee, JJ. that it was not correct to say that after the expenses of the deity were satisfied the surplus of the offerings were at the absolute disposal of the Ojha. The surplus was also the property of the deity and the Ojha was entitled out of it to recover reasonable and necessary expenses incurred for his own purposes.

The right of the founder or the shebait to the surplus that remains after meeting the expenses of the deity can certainly be established on the basis of a custom. This is illustrated by the case of Kumaraswami V. Lakshamana (s). In this case a pujari founded a public temple and bought lands partly in the name of the deity and partly in his own name with the offerings made by the devotees. Part of the income was spent for purposes of the temple and the rest for his own benefit. This mode of expenditure continued during the life-time of his son and grandson who also acted as pujaris. A suit was brought under section 92 of the Civil Procedure Code *inter alia* for framing a scheme and for a declaration that the lands and the offerings belonged to the deity. It was held that when there is no deed of endowment, usage is relevant evidence to determine whether the lands and offerings were after their acquisition endowed entirely for the temple or were only burdened with the actual expenses thereof, the surplus being held by the pujari for his own benefit ; and such usage if established would not be in any way contrary to the Hindu law.

It is not possible to enumerate exhaustively the various usages that obtain in different religious institutions in the matter of appropriating the devotee's gifts to the deity, nor can it be said that the usages are always in conformity with the presumed intentions of the founder. In certain public temples the offerings given by the devotees are divided between

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(r) 2 C. L. J. 460.
(s) 53 Mad. 608.

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the trustees and the Archakas, the latter being given a share in consideration of the services which they render to the temple. It may be noted that valuable presents are often made by the devotees to the Archakas themselves partly as acts of piety in holy places and partly as remuneration for services which the Archakas render to the devotees. As these gifts are not meant for the deity at all, they cannot become the property of the deity and must be regarded as personal belongings of the Archakas themselves.

Shebait's right of residence.

As regards the shebait's right of residence in the house dedicated to the deity, the usual practice is to make provision regarding it in the deed of dedication itself. As has been said in a previous lecture, a direction by the founder that the shebaits for the time being would be entitled to reside in the house set apart for the deity does not make the dedication in any way invalid or improper. On the other hand, such arrangements are considered to be extremely proper and convenient. As the Privy Council observed in Jnanendra V. Surendra (t), "it is a perfectly reasonable arrangement to secure that the man in whose hands the supervision of the whole estate is vested shall have associated with his duties the right to reside in the named dwelling house." Even if there is no provision in the deed of endowment, it seems that such right of residence would be implied in law unless there is any prohibition to that effect in the deed of endowment. Not only the general feeling of the Hindu community is in favour of giving the shebait a right of residence in the deity's house, but such right is really appurtenant to the duties which the shebait has got to discharge in regard to the spiritual and temporal affairs of the idol.

Shebaits must act jointly.

When there are more shebaits than one, they constitute one body in the eye of law, and all of them must act together. The management may be for practical purposes in the hands of one of the shebaits who is called the managing shebait or the shebaits themselves may exercise their right of management by turns ; but in neither case it is competent for one of the shebaits to do anything in relation to the

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(t) 24 C. W. N. 1026.

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Debutter estate without the concurrence either express or implied of his co-shebaits. This is, of course, subject to any express direction given by the grantor. The Judicial Committee in a very recent case (u) quoted a passage from Lewin's Law of Trusts, which in their opinion applied equally to shebaits in India. The passage runs as follows :

"In the case of co-trustees the office is a joint one. Where the administration of the trust is vested in co-trustees, they all form as it were but one collective trustee, and therefore must execute the duties of the office in their joint capacity. It is not uncommon to hear one of several trustees spoken of as the acting trustee but the Court knows no such distinction ; all who accept the office are in the eyes of the law acting trustees. If any one refuse or be incapable to join, it is not competent for the others to proceed without him, but the administration of the trust must in that case devolve upon the Court. However, the act of one trustee done with the sanction and approval of a co-trustee may be regarded as the act of both. But such sanction or approval must be strictly proved."

Thus the act of a majority of shebaits cannot bind the dissenting minority, nor the Debutter estate. In the Privy Council case quoted above the property belonging to an idol was mortgaged by a number of persons who claimed it as their personal property and one of the mortgagors was one of the trustees and managers of the deity ; in fact, he was the sole *de facto* manager. On behalf of the mortgagee a contention was raised that the idol was bound by the mortgage inasmuch as the sole shebait and trustee joined in it and purported to alienate whatever interest he had in the property. This contention was negatived and it was held that even if the mortgage was executed by one of the trustees as such, it would not pass a valid title unless the act was done with the sanction and approval of his co-trustees. As all the shebaits form one body in the eye of law, the deity is represented by all of them acting together and no one shebait can be said to represent the deity in part or to possess interest as such shebait in any parti-

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(u) Lala Manmohan V. Janki Prasad——49 C. W. N. 195.

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ADVANCEMENT OF LEARNING
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cular portion of the idol's property. Consequently, when one of the shebaits purported to alienate the Debutter property to the extent of the share which he had as shebait in respect to the same, the alienation was held to be void (v).

Shebaits must be co-plaintiffs in suits brought on behalf of the deity.

When a suit is to be brought on behalf of the deity either to recover possession of property held adversely by a stranger or for recovery of rent or any money payable to the Debutter estate, all the shebaits must join as plaintiffs (w). One of the co-shebaits cannot maintain a suit for recovery of rent to the extent of his share. In Burabani Coal Co. V. Gokulanand (x), four shebaits of a family deity had executed a mining lease of the idol's interest in a Mouza. A suit being instituted by one of the shebaits against the lessee for a four anna share in the royalties, it was held that such a suit was not maintainable and that the irregularity was not cured by making the other shebaits parties defendants. One of the shebaits, however, can file a suit to recover the entire rent on making the other shebaits parties defendants, if the latter are unwilling to join as plaintiffs (y). The position, therefore, is that ordinarily all the shebaits must figure as plaintiffs in a suit brought on behalf of the deity. If some of them refuse to join as plaintiffs or had done some act precluding them from being plaintiffs, one or more of the shebaits can maintain a suit without joining the others as plaintiffs, but making them parties defendants. The nature of the suit or the allegations made therein may also furnish exceptions to the general rule that all the shebaits must appear as plaintiffs. When a Debutter property is improperly alienated by one of the shebaits, the other shebaits can certainly bring a suit to set aside the alienation. In such a suit the alienating shebait who had misconducted himself may not be in a position to join as a co-plaintiff but he must be a party defendant (z). In Nirmal Chandra V.

(v) See Iswar, Kali Durga V. Surendra—45 C. W. N. 655.
(w) Bechulal V. Oliullah—11 Cal. 538 ; Kokilesari V. Mohunt Rudranand—5 C. L. J. 527 ; Narendra V. Atul Chandra—27 C. L. J. 605.
(x) 61 I. A. 35.
(y) Narendra V. Atul—27 C. L. J. 605.
(z) Rajendra Nath V. Seikh Mohammad—8 Cal. 42 P.C.

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Jyoti Prasad (a) one of the three shebaits brought a suit to remove the other two from office on grounds of misappropriation and breach of trust. In such a case the offending shebaits, against whom charges of misfeasance and neglect of duties were brought, could not possibly be invited to join the suit as plaintiffs and they could not but be defendants in the suit. If the right of a co-shebait is denied, he need not be joined as a party but if the denial turns out to be unfounded, the suit is liable to be dismissed. In Abdul Gofur V. Umakanta (b), one of the two shebaits of an idol instituted a suit for enhancement of rent in respect of a Debutter property making the other shebait a proforma defendant but alleging that the latter had ceased to reside in the village and was no longer interested in the endowment. The co-shebait defendant also in her written statement supported the allegations of the plaintiff and pleaded that she had no longer any connection with the Debutter. On evidence, however, this renunciation on the part of the defendant shebait was not proved and as there was no case of agency made out, it was held that the suit was not maintainable in law.

When all the shebaits are parties to the suit, either as plaintiffs or as defendants, is it necessary for the plaintiffs to aver and prove in all such cases that his co-shebaits, who were made defendants, were invited to join as plaintiffs and on their refusal to do so, had to be made defendants ? Would the suit necessarily fail if it is established that the defendants co-shebaits were not previously consulted and their opinion taken before the suit was brought ? In a Full Bench case of the Madras High Court (c) one of two co-Uralans brought a suit to redeem a mortgage without averring and proving that the other Uralan, who was a defendant in the suit, had been asked to join in the suit as a plaintiff. It was held that the suit was maintainable and it was impossible to hold otherwise in view of the provisions of sections 91 and 85 of the Transfer of Property Act which gave even a person interested in a fractional share of the equity

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(a) 45 C. W. N. 709.
(b) 19 C. W. N. 260.
(c) Karattoli V. Unni—26 Mad. 649.

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of redemption the right to bring a suit for redemption. In a subsequent case of the Madras High Court (d) which also arose out of a suit for redemption, the propriety of the Full Bench decision referred to above was assailed on the ground that section 91 of the Transfer of Property Act does not contemplate the interest of one of the co-shebaits who has no personal interest in the property. Without deciding this question finally, the learned Judges held that even apart from the provisions of the Transfer of Property Act upon which a suit for redemption was held to be maintainable at the instance of one of the co-shebaits, such suits could be maintained on general principles of law which govern actions instituted by joint owners or joint contractees. It was pointed out that in cases of joint owners and joint contractees, some of them may sue persons who infringe their rights making the other co-owners or co-contractees parties defendants without consulting them at all before the institution of the suit ; and it should not make any difference that the joint owners were trustees. It was observed by the learned Judges that "in cases where no remedial right accrues to the trustees until a majority after mutual consultation have signified their will, it cannot be competent to some of the trustees or even the majority to institute an action without such consultation. . . .But where the right to the relief claimed has accrued to the joint trustees, the institution of a suit by some only without having consulted the remaining trustees even where they have not perversely refused to join, cannot, it appears to us, be a sufficient ground for dismissal of the suit." There is much to be said in support of this view. Unless the plaintiff in suit asserts a sole right of shebaitship in himself adversely to the co-shebait defendants, it is always possible for the court to transfer these co-shebaits to the category of plaintiffs so that a decree may be passed in favour of them all. In any case, a decree would have to be made in all suits where the plaintiff happens to be one of the co-shebaits for the benefit of the entire endowment represented by all the parties to the suit (e).

(d) Kunhan V. Moorthi—34 Mad. 406.
(e) See Peary Mohan V. Kedar Nath—26 Cal. 409 F. B.

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In a somewhat recent case decided by the Calcutta High Court (f) a suit for ejectment in respect of a property belonging to the deity was brought by some of the shebaits making the rest proforma defendants on the ground that they were not willing to join as plaintiffs. The procedure was held to be unexceptionable, but it transpired that the notice to quit prior to the institution of the suit was given by the plaintiffs only and that the co-shebait defendants were no parties to it. The learned Judges held that this was a fatal defect, and unless it was shown that exceptional circumstances existed which would make the act of some of the shebaits binding on the rest, normally all the shebaits must join in an act of management relating to the Debutter and that the notice would not be valid notice by simply proving that the other shebaits were not willing to join in it.

I will have to advert presently to the more important question as to whether the deity has a right apart from the rights of the shebait to sue on his own behalf and can be a competent plaintiff in a suit in respect of the property held or claimed by it. When the suit is brought in the name of the deity and the deity purports to act through some of the shebaits only, the question arises whether the remaining shebaits are necessary parties to the suit ? It was held by Gentle J. in Sree Sree Sridhar Jew V. Kanta Mohan Mullick (g) that the rule that when there are more shebaits than one, all of them must join as co-plaintiffs, except under special circumstances, is applicable, whether the suit is in the name of the idol or in the names of the shebaits. A Division Bench of the same High Court, on the other hand, has held (h) that when the suit is by the deity represented by some of the shebaits, the question whether the other shebaits should be jointed as parties is often a question of mere procedure or expediency, the test being whether in all the circumstances of the case the interest of the deity can be sufficiently represented. A distinction undoubtedly exists between a suit by a

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(f) See Radha Charan V. Shree Shree Iswar Joykali Bigraha—46 C. W. N. 94.
(g) 50 C. W. N. 14.
(h) 49 C. W. N. 37.

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Rights of suits in regard to deity's property.

shebait and one by deity but what legal consequences, if any, flow from this distinction can be considered more properly when I discuss with you the broader and the more general question, viz., upon whom is the right of suit in respect to the deity's property vested? Is the deity to be regarded as a sort of perpetual infant who has got to act through guardian in the same manner as persons under disability ? Has the shebait any right in him to conduct a suit or proceeding in his own name apart from the rights of the deity ? What other persons besides the shebait can represent the deity in suits or proceedings and if so under what circumstances and with what results ? I will take up all these questions together.

Hindu idol is not a perpetual infant.

A Hindu idol is sometimes spoken of as a perpetual infant, but the analogy is not only incorrect but is positively misleading. There is no warrant for such doctrine in the rules of Hindu law and as was observed by Rankin, C. J. in Surendra V. Sri Sri Bhubaneswari (i), it is an extravagant doctrine contrary to the decision of the Judicial Committee in such cases as Damodar Das V. Lakhan Das (j). It is true that the deity like an infant suffers from legal disability and has got to act through some agent and there is a similarity also between the powers of the shebait of a deity and those of the guardian of an infant. But the analogy really ends there. For purposes of Limitation Act the idol does not enjoy any privilege and regarding contractual rights also the position of the idol is the same as that of any other artificial person. The provisions of the Civil Procedure Code relating to suits by minors or persons of unsound mind do not in terms at least apply to an idol; and to build up a law of procedure upon the fiction that the idol is an infant would lead to manifestly undesirable and anomalous consequences.

Shebait's right of suit.

An idol is certainly a juristic person and as the Judicial Committee observed in Promotha V. Pradyumna (k), "It has a juridical status with the power of suing and being sued." An idol can hold property and obviously it can sue and be sued in

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(i) 60 Cal. 54.
(j) 37 I. A. 147.
(k) 52 I. A. 245.

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respect of it. But the idol is the owner of the Debutter property only in an ideal sense ; its ideal personality is always linked up with the natural personality of the shebait. The Privy Council held in Maharaja Jagadindra Nath Roy V. Rani Hemanta Kumari (l) that "the possession and management of the dedicated property belong to the shebait ; and this carries with it the right to bring whatever suits are necessary for the protection of the property. Every such right of suit is vested in the shebait and not in the idol." This right is a personal right of the shebait and separate from any right which the deity may have of instituting a suit as a juristic person through a proper representative. In Jagadindra V. Rani Hemanta Kumari (l) the suit was not by the idol represented by the shebait but by the shebait himself who claimed to recover possession of the property in suit as belonging to the deity. Both the courts below held that title to the property was in the plaintiff but the High Court held the suit to be barred by limitation on the ground that the plaintiff did not claim proprietory interest in himself with regard to the lands in suit but as shebait of the idol, and *qua* shebait was not entitled under section 7 of the Limitation Act to any exemption of the period of limitation by virtue of his minority. This decree was reversed by the Judicial Committee and it was held that as the plaintiff was a minor at the time when the cause of action arose, he was entitled to claim exemption under section 7 of the Limitation Act. This decision, therefore, establishes three things :—

(1) That the right of suit in respect to the deity's property is in the shebait ;
(2) this right is a personal right of the shebait which entitles him to claim the privileges afforded by the Limitation Act ; and
(3) the shebait can sue in his own name and the deity need not figure as a plaintiff in the suit, though the pleadings must show that the shebait is suing as such.

In Thakur Raghunath V. Shah Lalchand (m), it

(l) 31 I. A. 203.
(m) 19 All. 330.

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ADVANCEMENT OF LEARNING
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was held by a Division Bench of the Allahabad High Court that a suit relating to property alleged to belong to a temple cannot be brought in the name of the idol of the temple. The plaintiff in such suit must be the manager of the temple. This decision was overruled by a Full Bench of the same High Court in Jodhi Rai V. Basdeo (n), and it was held that inasmuch as an idol is a juristic person capable of holding property, a suit respecting the property in which an idol is interested is properly brought or defended in the name of the idol, although *ex necessitate rei* the proceedings in the suit must be carried on by some person who represents the idol, usually the manager of the temple in which the idol is installed. It seems that the attention of the learned Judges was not drawn to the pronouncement of the Judicial Committee in Jagadindra V. Hemanta Kumari (o) and in view of that decision the proposition of law laid down in such broad form cannot possibly be supported. A suit does lie in respect of the deity's property at the instance of the shebait alone and it is not necessary that the plaintiff in such a suit should be the deity represented by the shebait or manager. But though a suit would lie at the instance of the shebait, it does not mean that the idol as a juristic person is deprived of its right of suit altogether. The exact scope of the doctrine laid down in Jagadindra's case is certainly not free from doubt. Right to sue is a necessary adjunct of the proprietory right, and if the property vests in the deity the right of suit cannot obviously be divorced from it. The view underlying the decision in Jagadindra's case seems to be that as an idol suffers from perpetual incapacity to engage itself in juridicial acts, the natural personality of the shebait supplies this legal deficiency in the idol. For all juridical purposes, it is the shebait and shebait alone that has the right to represent the idol and this creates what may be said to be a personal right in the shebait to institute a suit in respect of the idol's property. It is idle to say that such suit is not on behalf of the deity and is on behalf of the shebait personally. In substance, it is the suit of the deity

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(n) 33 All. 375 (F. B.).
(o) 31 I. A. 203.

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ADVANCEMENT OF LEARNING
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and the deity is fully bound by the result of it. But as nobody else except the lawful shebait can exercise this right on behalf of the deity, in a sense it is a right personal to the shebait. Where no shebait is lawfully in office or when he is unwilling to act or his interest is hostile and adverse to the deity, the deity can certainly file a suit through some person other than the shebait. The principle in Jagadindra's case therefore applies when there is a shebait actually in office and ready and willing to do all acts necessary for the protection of the deity's interest. In these normal circumstances the deity's right of suit can be said to have for practical purposes no independent existence apart from the rights of shebait, as it is through the shebait alone that the right could be exercised. The position, therefore, seems to be that when a shebait is in existence and functions normally, the deity's rights lie dormant. But as soon as the shebait ceases to act properly in the interest of the deity or asserts a claim adversely to the idol, the deity's rights can certainly be exercised independently of the shebait and even against the shebait himself.

In normal cases where the shebait is willing and able to act on behalf of the deity, the suit, as has been said already, can be brought in the name of the shebait himself. But it is really a technical matter whether the suit is brought actually in the name of the deity represented by the shebaits or the shebaits figure as plaintiffs describing themselves as shebaits of a certain deity which is not made formally the plaintiff in the suit. It is a question of form only and not of substance at all. As Sir George Rankin observed in Masjid Sahidgunj V. Shiromoni Gurdwara (p), "the procedure of our courts allows for a suit in the name of an idol or deity though the right of suit is really in the shebait". If this is the correct position, the view of Gentle, J. referred to above that when the deity is suing through the shebait, no matter whether such suit is brought in the name of the idol or not, all the shebaits must join as plaintiffs except where circumstances exist which allow an exception to be made in the application of the ordinary rule seems to be quite sound.

(p) 67 I. A. 251.

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In Shri Shri Kalimata V. Nagendranath (q), a suit was instituted in the name of the deity by her next friend Basanta Kumari and by Basanta Kumari herself as a worshipper, for a declaration that a certain deed executed by shebaits Suresh, Nagendra and others revoking an earlier deed of trust executed by Suresh, whereby the properties had been dedicated to the deity, and the subsequent mortgage by Suresh were not binding upon the deity. It was held that the suit was not maintainable at the instance of the deity or a worshipper as the right to sue was in the shebait and it was not proved definitely that Nagendra in his capacity of shebait had declined to institute the suit. The enunciation of law by the learned Judge on the basis of Jagadindra's case may not be open to objection, but he certainly misapplied it to the facts of the case. All the shebaits including Nagendra were parties to the deed which was challenged on behalf of the deity as being detrimental to its interests. In such circumstances it is difficult to say how Nagendra or the other shebaits could be expected to file the suit as plaintiffs. After all the interest of the deity is the object of paramount consideration by the court and as Nagendra and other shebaits were parties dsefendants to the suit, any one or all of them could have been transferred to the category of plaintiffs if they were willing to take the carriage of the suit in their hands.

Right of suit of persons other than the shebaits.

When a shebait declines to bring a suit or by his conduct places himself in such a position that he could not be expected to bring a suit, the question arises, what other persons can file a suit to protect the interests of the deity ? It has been laid down in a number of cases that in such circumstances the prospective shebait, the heirs of the founder, or any member of the family who is entitled to rank as a worshipper of the family deity are entitled to institute suits for protection and preservation of the Debutter property and for preventing improper alienation or waste by the manager. In Monohar Mukherji V. Rajah Peary Mohan (r), the suit was brought

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(q) 44 C. L. J. 522.
(r) 24 C. W. N. 478.

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by an heir of the founder upon whom the management of the Debutter would devolve if the actual incumbent was removed for his misconduct and it was held that such person was quite competent to invoke the assistance of a judicial tribunal for the proper administration of the Debutter. In Girish V. Upendra (s) it was laid down by a Divion Bench of the Calcutta High Court that when a private Debutter or family endowment has been created for the worship of a deity, a prospective shebait or any member of the family of the donor is entitled to maintain a suit for a declaration that certain properties do not belong to the shebait for the time being but are trust property or that an alienation made by a shebait was not binding on the deity. The same principle was laid down in Panchkori V. Amodelal (t). An opinion was expressed in the last named decision that even a *de facto* shebait will be entitled to bring a suit for such purpose. But as on the facts of that case, it was held that the plaintiff was not a *de facto* shebait at all, the opinion expressed by the learned Judge cannot rank higher than an *obiter*.

In all these cases the suits were brought by the prospective shebait, the worshippers or persons interested in the endowment in their own names and not in the name of the idol. It cannot be denied that a worshipper or a prospective shebait has an interest of his own quite apart from that of the deity and his right to sue for the protection of the idol's property is founded on his own right to worship and the maintenance of the object of worship. It was held by Pal, J. in Tarit Bhusan V. Sri Sri Iswar Sridhar Salgram (u) that the rights of worshippers, family members or prospective shebaits are personal rights of these persons and they could be exercised quite independently of the idol's right to sue for protection of its own interest. The learned Judge rightly pointed out that there is a substantial distinction between a suit by certain interested persons as such in their own names and a suit by a person in the name of the idol as its next friend. In the former case, the

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(s) 35 C. W. N. 768.
(t) 41 C. W. N. 1349.
(u) 45 C. W. N. 932.

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consequences of the suit will be binding on the persons suing or on the persons whom they represent. In the latter case, the idol itself will be affected as a juridical person and the decision will be conclusive and final. In Tarit Bhusan's case, a suit was instituted in the name of the idol represented by its next friend Anupama. Anupama though a daughter of the then shebait, was not a shebait herself either actual or prospective and was a mere worshipper. The suit was for a declaration among others that the suit properties were Debutter and could not be sold in execution of a mortgage decree obtained by the defendant against the shebait who mortgaged the same as secular properties. The execution case started by the mortgagee decreeholder was pending at that time. During the pendency of the suit, the execution proceeding was dismissed for default and after that the suit was also dismissed under Order 9 Rule 8 Civil Procedure Code and an application for restoration of it under Order 9 Rule 9 failed. The mortgagee decreeholder then started a fresh execution case, and thereupon a fresh suit was brought by the idol represented by one of its shebaits for a declaration that the properties in dispute were Debutter properties and were not liable to be sold in execution of the mortgage decree. The question was, whether this fresh suit was barred under Order 9 Rule 9 Civil Procedure Code ? The question was answered in the negative. Both the learned Judges, who heard the case, were of opinion that :

(1) the previous suit was not the deity's suit as Anupama who was a mere worshipper, had no right to represent the deity ; and

(2) the cause of action in the subsequent suit was different.

Nasim Ali, J. went further and said that even if the previous suit was a suit by the idol and the cause of action was the same, the present suit was maintainable on the analogy of a suit in similar circumstances by a minor who could sue for setting aside the previous order of dismissal on the ground that the guardian who purported to represent the deity was grossly negligent in the discharge of his duties. In this view, however, the other learned Judge (Pal, J.) did not concur. If the cause of action in the two suits was different, obviously the bar under

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Order 9 Rule 9 Civil Procedure Code would not apply. But the decision of the learned Judges on the other point, viz., as to whether the previous suit was the deity's suit or not is calculated to raise questions of a somewhat difficult nature. Nasim Ali, J. seems only to have observed that as Anupama was neither a *de jure* nor a *de facto* shebait, she had no right—to represent the deity ; and if she purported to exercise certain powers which she did not possess in law, the deity would not be bound by the result of the exercise of such powers. Pal, J. on the other hand definitely took the view that nobody else except the shebait can legally and effectively represent the deity in a suit unless he is appointed by the court to represent the idol. Anupama was not appointed as the next friend by the court, but as she had undoubtedly the rights of a worshipper, she must be presumed to have exercised those personal rights when she brought the suit. To elucidate these points it would be necessary to discuss thoroughly the nature of the deity's right to sue as a juristic person.

Deity's right of suit as a juristic person.

The deity as a juristic person has undoubtedly the right to institute a suit for the protection of its interest. So long as there is a shebait in office, functioning properly, the rights of the deity, as stated above, practically lie dormant and it is the shebait alone who can file suits in the interest of the deity. When, however, the shebait is negligent or is himself the guilty party against whom the deity needs relief, it is open to worshippers or other persons interested in the endowment to file suits for the protection of the Debutter. It is open to the deity also to file a suit through some person as the next friend for recovery of possession of property improperly alienated or for other relief. Such next friend may not unoften be a person who as a prospective shebait or a worshipper is personally interested in the endowment. How then are we to distinguish between these two classes of cases and ascertain whether it is a suit by the deity or by the worshipper personally ? The answer would certainly depend upon the nature of the suit and the nature of the relief claimed. If the suit is not in the name of the deity, it cannot be regarded as a deity's suit, even though the deity is to be benefited by the result of the litigation. It would be the

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personal suit of the worshipper, the family member or the prospective shebait as the case may be. Again these persons are not entitled to claim any relief for themselves personally, e.g. by way of recovery of possession of the property improperly alienated or adversely possessed by a stranger. Now, in Tarit Bhusan's case the suit was instituted in the name of the deity and the deity purported to be represented by Anupama as its next friend. Anupama was the daughter of Jogesh, the then shebait, who had mortgaged the disputed properties as his own personal properties and against whom the mortgagee obtained a decree. In such cases, where the deity wanted relief against the shebait himself, it cannot possibly be expected that the shebait would represent the deity in the suit. If the deity has any right of suit at all, it must be exercised through some other person as next friend. Mr. Justice Pal's opinion seems to be that no person other than the shebait can legally or effectively represent the deity unless he has been specially appointed by the court. As Anupama was not legally appointed by the court, her suit could be regarded as a suit instituted by her on the basis of her own personal rights and not a suit by the deity at all. There is much to be said in favour of the view taken by Pal, J., though judicial opinion on this point is neither clear nor uniform. There is no specific provision in the Civil Procedure Code relating to suits by or against idols and the provisions of Order 32 Civil Procedure Code are not in terms applicable to such cases. If the provisions of Order 32 Civil Procedure Code are held to regulate suits brought by or against an idol, obviously no appointment by the court is necessary before a suit could be filed by the idol through its next friend.

Appointment of guardian by court to represent the deity.

The idea of having a guardian appointed by the court to represent the deity in litigations in which it is interested seemed to have originated from the pronouncement of the Judicial Committee in Mallick V. Mallick (v). In that case there was a quarrel between the shebaits themselves who would ordinarily represent the deity regarding the right of removal of the deity

(v) 52 I.A. 245.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

to the place of residence of one of the shebaits during his turn of worship. The Privy Council held that in such matters the will of the deity is to be respected ; and as the deity was not a party to the litigation, the suit was remitted to the court below in order that the idol may be represented by a disinterested person appointed by the court to express its will in regard to the matter in dispute. In Kanhiya Lal V. Hamid Ali (w), there was a suit for possession of a plot of land upon which the defendants had erected a Thakurdwara. The Judicial Committee being of opinion that the appeal could not be properly disposed of in the absence of Sri Thakurji Maharaj, whose interest was involved in the litigation, followed the same procedure as was indicated in Mallick V. Mallick (x) and remitted the case to the Chief Court for a re-hearing after addition of parties. In none of these cases, however, there was any question of any deity filing a suit for protection of its own interest by next friend. In Administrator General of Bengal V. Balkissen (y), Mr. Justice Page of the Calcutta High Court expressed the opinion that although after the appointment of a shebait it is the shebait who has the right to sue in respect of a deity's property, yet so long as the shebait is not appointed it may be permissible to file a suit in the name of the deity and the court should appoint some person as agent *ad litem* for the deity. Apart from the fact that the expression 'agent ad litem' is something unheard of, the learned Judge did not indicate under what provision of law such appointment could be made. The point came up for consideration before Lort Williams, J. sitting singly in Sharat Chandra Shee V. Dwarkanath Shee (z) and the learned Judge held that in case of a private religious trust, with regard to mismanagement of which the members of the public cannot intervene and the shebait cannot be expected to bring a suit against himself, it is necessary and desirable that the idol should file a suit by a disinterested next friend appointed by the court. In this case the suit was for

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(w) 60 I. A. 263.
(x) 52 I. A. 245.
(y) 51 Cal. 953.
(z) 58 Cal. 619.

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removal of the defendant who was a shebait under the will of one Baidya Nath Shee. The persons who were interested in the endowment under the terms of the will were all dead and the suit was filed by two grandsons of a brother of the founder. Mr. Justice Lort Williams appointed the first plaintiff the next friend of the deity. Mr. Justice Pal substantially accepted this procedure as correct in Tarit Bhusan V. Sridhar Salgram (a). The reason that weighed strongly with the learned Judge was that if a suit could be instituted on behalf of the idol by any person as its next friend, it would really be an invitation to all sorts of persons to come and meddle in the affairs of the idol and if the idol is to be bound by the result of such suit or proceeding, it would be disastrous to its interests. In the opinion of the learned Judge the provisions of Order 32 Civil Procedure Code could not be applied to the case of a deity as the deity is not a minor in law and moreover, these provisions would not safeguard the interest of the idol at all. If anybody has any interest in the endowment and purports to institute a suit as the next friend of the idol without being appointed as such by the court, the suit could be regarded as his own suit and not the suit of the idol. This view was accepted and followed by Gentle, J. in Sri Sri Sreedhar Jew V. Kanto Mohan (b). On the other hand, Sen, J. held in Thakur Sri Sri Annapurna V. Shiva Sundari Dasi (c) that appointment by the court could not be an essential prerequisite to enable the next friend to institute a suit on behalf of the idol. If the defendant contested the fitness of the next friend to act for the deity, it would be open to the court to investigate the matter and decide the question one way or the other. All these decisions were reviewed by Das, J. in Gopal Jew V. Baldeo (d), and it was held by the learned Judge that as on the authorities already well established it is competent to a shebait to act as a next friend of an idol without appointment by the court. there was no reason why the same right of suing as the next friend of the deity without any appointment by court

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(a) 45 C. W. N. 932.
(b) 50 C. W. N. 14.
(c) I. L. R. (1944) 2 Cal. 144.
(d) 51 C. W. N. 383.

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should not be allowed to other persons interested in the endowment like the worshippers and prospective shebaits. In the opinion of Das, J. there being no definite procedure laid down by law relating to suits of idols, the provisions of Order 32 of the Civil Procedure Code should be applied as far as possible, and these provisions, according to him, would safeguard the interest of the idol, at least no less effectively than an ex parte order of appointment made by the court.

In view of this difference of opinion expressed by different Judges of the Calcutta High Court—and they are all opinions of single Judges for even in Tarit Bhusan's case Nasim Ali, J. does not seem to have expressly accepted the decision of Pal, J. on this point—it is eminently desirable that the law on this subject which relates to an important matter of procedure should be settled by a larger bench of the court. The question does not seem to have been raised in this form in any of the other High Courts in India. In Dashan Lal V. Shibji Maharaj (e), the idol filed a suit through a next friend who was a priest of the temple and looked after the management of the temple affairs. He was not in the position of a manager or trustee or even of a worshipper in the proper sense of the word. It was held by the learned Judges of the Allahabad High Court that they were not prepared to accept as a correct proposition of law that any person claiming a benevolent interest in the affairs of the idol would be permitted to maintain a suit in the name and as the next friend of the injured idol. If the provisions of Order 32 Civil Procedure Code are taken to apply to suits of idols, the difficulty would certainly arise in cases where the next friend is not a party interested in the endowment at all, but is a perfect stranger and takes merely, what the Judges of the Allahabad High Court have said, a mere benevolent interest in the affairs of the deity. In a very recent case the same High Court has held that the analogy of a deity being treated as a minor is very imperfect analogy and cannot be carried far enough to make Order 32 Civil Procedure Code applicable (e[1]).

(e) 45 All. 215.
(e[1]) Doogar Sen V. Tir Bhawan—I. L. R. (1947) All 263.

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As the position of an idol is admittedly different from that of an infant, there is no particular reason why the procedure laid down in Order 32 Civil Procedure Code should be made applicable to an idol's suit. When the Privy Council suggested the idea of having the deity represented by a disinterested person in the case of Mallick V. Mallick (f), they were not thinking certainly of the provisions of Order 32 or of any other provision in the Civil Procedure Code. The rule was laid down as a matter of expediency and for safeguarding the interest of the idol. The rules of procedure after all are only means to serve the ends of justice, and if the appointment of a next friend by the court is calculated to safeguard the interest of the deity, there could be no real objection to the procedure suggested by Mr. Justice Pal in Tarit Bhusan's case. If a new procedure has got to be invented, it is not safe to rely upon mere analogy and invoke the provisions of Order 32 of the Civil Procedure Code when the accepted judicial opinion is that an idol does not occupy the position of an infant in law. Any way these questions ought to be settled finally, as otherwise the lower courts would experience considerable difficulties in dealing with such matters with regard to which different Judges of the High Court have taken different views.

Deity not a necessary party in all suits relating to Debutter.

It would be clear from what has been stated above that the deity is not a necessary party in all suits relating to Debutter. The case of Jagadindra V. Hemanta Kumari (g) is itself an authority for the proposition that it is open to a shebait to institute a suit in his own name to recover property belonging to the deity and the deity need not be made a party to such suit. If a worshipper brings a suit in his own name for declaring certain properties as Debutter, he need not make the deity a party to such suit apart from the shebait (h). If the deity is vitally interested in the result of a suit or its wishes have to be expressed through a disinterested person or if the shebaits have any interest adverse to the deity, it is necessary that the deity should be made a party to

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(f) 52 I. A. 245.
(g) 31 I. A. 203.
(h) Sashi V. Dhirendra—45 C.W.N. 699.

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such litigation. In a suit brought for framing of a scheme of a private Debutter, the deity is not always a necessary party, but it should be made a party if its interests are likely to be affected in any way (i). When the only question in controversy is as to whether the plaintiff has established his rights as shebait of the suit properties and neither the plaintiff nor the defendant denies the title of the deity to the properties, the idol is not a necessary party (j).

Rights of a *de facto* shebait.

Before I close this topic it may be pertinent to say a few words as regards the position of a *de facto* shebait in the matter of instituting suits on behalf of the deity. A *de facto* shebait may be described as one who is in possession of the endowed property and exercises all the functions of a shebait though the legal title is lacking (k).

The statement of law in Jagadindra's case that the right to sue in respect of the deity's property is vested in the shebait cannot possibly be extended to the case of a *de facto* shebait who has no lawful title to shebaitship. Nevertheless as the deity is a juristic person and various persons other than the shebait can institute suits on behalf of the deity, there could be nothing wrong in allowing a *de facto* shebait to file suits not for his own benefit but for the benefit of the endowment. The Privy Council in Mahadeo Prosad V. Karia (l) laid down, following an earlier pronouncement of theirs in Ram Chandra V. Nawrangi (m), that a person in actual possession of a *Math* is entitled to maintain a suit to recover property appertaining to it not for his own benefit but for the benefit of the Math. These were cases which related to a Math and not to a Debutter, but the same reasoning, it seems, would apply to a debutter endowment as well and it has been so held in several decided cases. The Allahabad High Court held in Gopal Dutt V. Baburam (n) that a suit can be brought in the

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(i) Bimal Chandra V. Gunendra—41 C. W. N. 728 ; Upendra V. Baikuntha—33 C. W. N. 96.
(j) Haripada V. Elakeshi—A. I. R. 1940 Cal. 254.
(k) Vide the observation of Mukherjea, J. in Panchkori V. Amode——41 C. W. N. 1349.
(l) 62 I. A. 47 ; 39 C. W. N. 433.
(m) 60 I. A. 124 ; 37 C. W. N. 541.
(n) (1936) A.L.J.R. 515.

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name of the idol by a person who is the *de facto* manager of a temple and the same view was taken by the Chief Court of Oudh in Sri Radha Krishna V. Maharaj Kumar (o) and quite recently by a Full Bench of the Madras High Court in Sankaranarayanan V. Shri Poovananatha (p).

In the Madras Full Bench case, the learned Judges quoted with approval the observations of Wadsworth, J. in an earlier case (q) which stated the true rationale of the rule permitting a *de facto* trustee in possession and management of a temple or mutt to bring a suit for the recovery of properties belonging to the institution or to take such action as may be necessary in the interests of the trust. The observations are as follows : "It is the duty of the court to protect the trust property from misappropriation and diversion from the objects to which it was dedicated. When the trust property is without a legal guardian owing to any defects in the machinery for the appointment of a trustee or owing to unwillingness of the legal trustee to act, it would be a monstrous thing if any honest person recognised as being in charge of the institution and actually controlling its affairs in the interest of the trust should not be entitled, in the absence of any one with a better title, to take these actions which are necessary to safeguard the interests of the trust."

It was laid down in the judgment of the Full Bench that in order to entitle a person to maintain a suit on behalf of the endowment, it must be proved that he is in exclusive possession of the office of manager or head of the institution, though he may not be able to establish his legal title to it. In the words of Biswanath Sastri, J. "If a man forcibly, violently or dishonestly takes possession of trust property under a false claim to be a trustee, or if there is a scramble for possession between rival contestants, the claim of *de facto* trusteeship is untenable. A fugitive or isolated act of a person with regard to property of a religious endowment would not make him a *de facto* trustee.....There must be a continuous course of

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(o) 12 Luck. 331.
(p) A. I. R. (1949) Mad. 721.
(q) Subramannaiya V. Abbinava—A.I.R. (1940) Mad. 617.

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conduct, the length of the same depending upon the facts and circumstances of the case".

The mere fact that a man secures somehow or other the custody of an idol and begins to worship it, would not by itself make him a *de facto* shebait (r).

Effect of a decree against the shebait and shebait's power to compromise.

A decree or judgment properly obtained against the shebait of a deity is binding on his successors. It was laid down by the Judicial Committee as early as in the case of Prosunna V. Golab (s) that shebaits as such form a continuing representation of the idol's property, and a decree passed against one shebait binds the successive shebaits. One shebait may not strictly speaking be said to claim under his predecessor, yet as the shebait for the time being completely represents the debutter estate, a decision against one shebait binds successive shebaits by reason of the juridical relation between the office and the property. The principle is analogous to that upon which the reversioners have been held to be bound by a decision obtained against a Hindu widow in possession of her husband's estate (t). Of course the decree must be untainted by fraud or collusion, and necessary and proper issues must have been raised, tried and decided in the suit which led to it (u). It has been held by the Madras High Court that a decree passed against a *de facto* trustee of a temple binds the temple or the *de jure* trustee in the absence of fraud or any other vitiating element (v).

The binding nature of the decree is not affected by the fact that it is based on compromise (w). It is always within the competence of a shebait to enter into a *bona fide* compromise for the benefit and preservation of the Debutter estate (x). As the Indian Trusts Act does not apply to a Hindu religious endowment, it is not necessary to bring into aid the provisions of section 43 of the Trusts Act for such purposes. The power to compromise is inherent in the right of

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(r) Vide Mukherjea, J. in Panchkari V. Amode—41 C.W.N. 1349.
(s) 2 I.A. 145.
(t) See Gora Chand V. Makhanlal—6 C.L.J. 404 ; Lilabati V. Bishnu Chobey—6 C.L.J. 621 ; Upendra Nath V. Kusum Kumari—42 Cal. 440.
(u) Vide Prosunna V. Golab—2 I.A. 145.
(v) Vide Sri Vedapureswar V. Sudarsana—A.I.R. (1946) Mad. 74.
(w) Vide Kamkhya Vasaka V. Balagopal—29 Mad. 553.
(x) Vide Hosenali V. Bhagawan Das—34 Cal. 249.

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management which the shebait possesses. As has been said already, the deity cannot be treated as a perpetual minor, and the provisions of Order XXII of the Code of Civil Procedure are not applicable to a suit brought on behalf of the deity. In such cases, it is not necessary for the shebait to take the permission of the court for the purpose of validating the compromise of a suit. The conditions of a valid compromise are the same which determine the validity of a compromise entered into by a Hindu widow as representing the estate of her husband. If it is a *bona fide* transaction entered into for the benefit of the estate, and not for the personal advantage of the manager himself it is to be held binding.

Shebait can not delegate his authority.

A shebait, like a trustee in English law, cannot delegate his duties to another, no matter whether such other is a stranger or a co-trustees. The rule is founded on the maxim "Delegatus non potest delegare." The meaning and implication of this rule were thus explained by Bowen, L. J. in Re Speight, Speight V. Gaunt (y) : "The proposition as to trustees or agents that they cannot delegate, means this simply that a man employed to do a thing himself has not the right to get somebody else to do it, but when he is employed to get it done through others, he may do so." In cases, therefore, where a trustee is entrusted to do a particular thing himself, he cannot authorise somebody else to exercise judgment on his behalf. It is open to a trustee to appoint a sub-agent or avail himself of the services of others, whenever such employment is according to the normal course of business, but such appointment must only be as a means of carrying out his own duties himself and not for the purpose of delegating those duties by means of such appointment (z). In Bonnerji V. Sitanath (a), a lease was executed by an attorney of a trustee who himself did not negotiate or consider the lease or never knew of it until after execution. The Judicial Committee held the lease to be invalid. "The duties of Protap" thus observed their Lordships "were in

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(y) 22 Ch.D. 727, 763.
(z) Vide Shree Shree Gopal V. Shoshee Bhusan—60 Cal. 111.
(a) 49 I.A. 46.

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their nature fiduciary and fiduciary duties cannot be the subject of delegation. If, therefore, the document had been before their Lordships it would have been impossible to support the contention that it conferred the power to negotiate and execute the document upon which the whole of the defendant's case rests." In Shree Shree Gopal V. Soshee Bhusan (b) the defendant No. 3 as the son of defendant No. 2, the shebait of certain deities, entered into a contract for lease of certain debutter properties with the plaintiff. In a suit for specific performance of the contract, the defence *inter alia* was that defendant No. 3 had no authority to enter into the contract on behalf of the shebait and even if he had, the shebait herself being incompetent in law to delegate her duties, such authority could not assist the plaintiff. Both these contentions were accepted by the High Court and the plaintiff's suit for specific performance of the contract was dismissed. In course of their judgment the learned Judges observed as follows : "It cannot be denied that the granting of a lease of this character was a matter with regard to which the defendant No. 2, as shebait, was bound to exercise her judgment ; and when it is found that the defendant No. 3, under a supposed authority, which must have purported to delegate that exercise of judgment to him, made the contract, and when the defendant No. 2 repudiates the contract at the earliest opportunity available to her, it is impossible to uphold this delegation, which is a good deal more than the mere employment of a machinery for carrying out the duties which attach to the defendant No. 2 in the fiduciary character she occupies : it is impossible to hold that specific performance should be granted in respect of it."

It was held by Kekewich, J. in Re Weall, Andrews V. Weall (c) that when a trustee is eititled to appoint agents under express terms of his appointment or because the usual course of business sanctions such procedure, "he is bound to exercise his own discretion in the matter of appointing agents ; and so long as

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(b) 60 Cal. 111.
(c) 42 Ch.D. 674.

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he selects persons properly qualified, he cannot be made responsible for their intelligence or honesty. He does not in any sense guarantee the performance of the duties. It does not follow however that he can entrust his agents with any duties which they are willing to undertake or pay them any remuneration which they think fit to demand. The trustee must consider these matters for himself and the court would be disposed to support any conclusion at which he arrives, however erroneous, provided it really is his conclusion—that is the outcome of such consideration as might reasonably be expected to be given to a like matter by a man of ordinary prudence guided by such rules and arguments as generally guide such a man in his own affairs." These principles have been held to be applicable in their entirety to the case of a shebait by the High Court of Calcutta in the case referred to above (d). It is to be noted that under the express provisions of the English Trust Act of 1925 the liability of a trustee for acts of the agent in regard to transactions which are covered by the act is much more limited than what it was before. He cannot be made personally liable for a loss due to the employment of the agent unless he is guilty of wilful default (e).

A shebait cannot delegate his authority even to a co-shebait. As has been said in the previous chapter, it is permissible to shebaits for the purpose of convenience to make arrangements or schemes for separate management ; but they cannot while retaining their office abdicate altogether their duties and functions and delegate their authority including that of sale, gift or mortgage to a co-shebait. These arrangements amongst the shebaits can authorise the doing of routine administration work but can not authorise an alienation of the debutter property without the concurrence of all the shebaits (f).

(d) 60 Cal. 111.
(e) Vide the observation of Maugham, J. in Re Vickery, Vickery V. Stephens—(1931) 1 Ch. 572.
(f) Official Receiver V. Jogmaya—50 C.W.N. 272.

CENTRAL LIBRARY

Shebait's power of alienation of debutter property.

Property dedicated to the services of an idol is, as a rule, inalienable but exceptions to this rule have been recognised in the interest of the deity itself. Exceptional circumstances do happen when the shebait as a manager of the endowment finds it difficult, nay impossible, to carry on the worship of the idol without securing money from other sources, and it may be necessary to raise money for repairing the temple and other possessions of the deity, for defending hostile litigious attacks and for similar other purposes. It is true that the shebait is a mere manager and not the owner of the debutter properties ; but as has been said over and over again, the idol is the owner only in an ideal sense. There is always a human personality linked up with this ideal personality and the shebait or manager of the deity must of necessity be empowered to do whatever may be required for the service of the idol and for the benefit and preservation of its property, at least to as great a degree as the manager of an infant heir (g). It is on this principle that a shebait has been held entitled to alienate debutter property in case of need or benefit to the estate. The rights of a shebait in this respect are analogous to those of a manager of an infant heir (h), as laid down in Hunooman Pershad Pandey's case (i).

In Hunooman Pershad's case (i), the Privy Council laid down the principle of Hindu law which will determine the validity of a transaction entered into by the *de facto* manager of an infant's estate by which the property of the infant was charged with payment of money. "The power of the manager for an infant heir to charge an estate not his own" so runs the judgment of Knight Bruce, L. J. "is under the Hindu Law a limited and a qualified power. It can only be exercised rightly in the case of need or for the benefit of the estate. But where in the particular instance the charge is one that a prudent owner would make in order to benefit the estate the *bona fide* lender is not affected by the precedent mismanage-

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(g) Vide Prosonna Kumari V. Golab Chand—2 I.A. 145.
(h) Vide Prosonna Kumari V. Golab Chand—2 I.A. 145 ; Konwar Doorganath V. Ram Chandra—4 I.A. 52.
(i) 6 Moore's I.A. 393.

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ment of the estate. The actual pressure on the estate, the danger to be averted or the benefit to be conferred on it in the particular instance is the thing to be regarded..... Their Lordships think that the lender is bound to enquire into the necessities for the loan and to satisfy himself as well as he can with reference to the parties with whom he is dealing that the manager is acting in the particular instance for the benefit of the estate. But they think that if he does so enquire and acts honestly, the real existence of an alleged sufficient and reasonably credited necessity is not a condition precedent to the validity of the charge, and they do not think that under such circumstances he is bound to see to the application of the money" (j).

The transaction in Hunooman Pershad's case was one by way of mortgage or charge for money received as loan but the same principle applies to other forms of alienation like sale or permanent lease. No sale or mortgage of the debutter property by the shebait would be binding on the deity unless it is supported by legal necessity or benefit to the idol. A shebait certainly can create proper derivative tenures and estates which are conformable to ordinary usage but he cannot create, without unavoidable necessity, a lease on a fixed rental for all time to come however adequate that rent may be at the time of granting the lease. The reason is that by these means "the debutter estate would be deprived of the chance it would have, if the rent were variable, of deriving benefit from the enhancement in value in the future of the lands leased." This proposition of law was laid down by the Privy Council as early as in 1869 in the well known case of Maharanee Shibessouree V. Mothoora Nath (k), and it has been reiterated by them in a large number of cases since then. See Seena Peena Reena V. Chokklingam (1) ; Abhiram Goswami V. Syama Charan (m) ; Palaniappa V. Devasikamony (n).

(j) 6 M.I.A. 423.
(k) 13 M.I.A. 270.
(l) 31 I.A. 83.
(m) 36 I.A. 148.
(n) 44 I.A. 147.

CENTRAL LIBRARY

There is quite a large number of decided cases where questions of necessity or benefit to the debutter estate have been raised in connection with different kinds of alienation made by the shebait and I would have to take you to some of them presently. But before I do so, there are a few matters of general importance and very much pertinent to the present enquiry which I would like you to bear in mind when you pursue this subject.

Shebait can alienate income as well as corpus.

In the first place I would make it clear to you that the shebait's powers of alienation in case of necessity or benefit to the deity are not confined only to the income of the debutter estate but extend to the corpus as well. The observations of Chief Justice Westpropp of the Bombay High Court in certain Bombay cases (o) and also those of Sir Subramania Ayyer in Nallayappa V. Ambalavana (p) would seem to suggest that a Hindu religious endowment cannot be sold or permanently alienated at all, and that only its income could be temporarily pledged for necessary purposes such as repairs of the temple etc. "According to the Indian common law relating to Hindu religious institutions" thus observed Subramania Ayyer, J. in the Madras case referred to above "the landed endowments thereof are inalienable. Though proper derivative tenures conformable to custom may be created with reference to such endowments, they cannot be transferred by way of a permanent lease at a fixed rent nor can they be sold or mortgaged. The revenues thereof may alone be pledged for the necessities of the institution." However much these observations might be in harmony with orthodox Hindu ideas, it must be said that the statement of law made therein is contrary to what the Privy Council laid down in Prosonna Kumari V. Gulab Chand (q) and in all other subsequent cases and consequently cannot be accepted as correct (r). In fact, none of the High Courts in India have followed the principle that

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(o) Narayan V. Chintamoni—5 Bom. 393 ; The Collector of Thana V. Hari Sitaram—6 Bom. 546.
(p) 27 Mad. 465.
(q) 2 I. A. 145.
(r) See in this connection Devasikamony V. Palaniappa—34 Mad. 535

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ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

only the income of the debutter property could be pledged.

Shebait's alienation without legal necessity may hold good so long as he holds office.

In the second place I would ask you to bear in mind that even though a particular alienation by the shebait is not supported by legal necessity, still it would not be void altogether and may enure so long as the shebait is alive or holds his office. A shebait, therefore, can even without any legal necessity create an estate or tenure commensurate with his term of office and between the grantor and the grantee such an estate would be valid, though it would not be binding on the succeeding shebait.

[See Abhiram Goswami V. Syama Charan (s) ; Vidyavaruthi V. Balusami (t).]

It goes without saying that a shebait can alienate a debutter property only by transfer inter vivos. No disposition by a will is possible or legal. A transfer by way of gift can scarcely be supported by legal necessity unless the purpose of the endowment itself makes such gift compulsory on the part of the shebait. But on the principles stated above, a gift can be held to be operative during the life time of the grantor, though it would have no effect after the donor ceases to be in office.

Transfer of the entire endowment void altogether.

The third thing I would desire to impress upon you is that the alienation by the shebait can only be made of certain items of endowed property. A transfer of the endowment as a whole is wholly void and the transferee would acquire no title by such alienation even as against the transferor so long as he is alive. This was the decision of the Privy Council in case of a *Math* in Gnanasambanda V. Valu Pandaram (u) and Damodar Das V. Lakhan Das (v). The same principle would apply to a debutter also. (w).

Necessity and benefit to the idol —what they mean.

Alienation of debutter property by the shebait can be justified only on grounds of necessity or benefit to the idol. It is not possible to define exhaustively as to what circumstances would constitute necessity

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(s) 36 I.A. 148.
(t) 48 I.A. 302.
(u) 27 I.A. 69.
(v) 37 I.A. 147.
(w) Vide Hemanta Kumari V. Sri Sri Iswar Sridhar Jew—50 C.W.N. 629.

CENTRAL LIBRARY

or benefit to the debutter esate. Each case would have to be decided on its own facts. Obviously necessity and benefit are two different ideas and there is a distinction between them, though in each individual case it is difficult to put them into water-tight compartments, as in the majority of cases the same facts upon which necessity could be pleaded would support the case of benefit as well. An attempt was made by Sundara Aiyer, J. in Vembu V. Srinivasa (x) to frame a definition of necessity and it was said by the learned Judge that "necessity connotes the idea of warding off an evil or the doing of something that cannot be avoided or some thing which it is one's legal duty to do." On the other hand, in Palaniappa Chetti V. Devasikamony (y) their Lordships of the Judicial Committee while discussing the meaning of the expression "benefit to the estate" observed as follows : "It is impossible, their Lordships think, to give a precise definition of it applicable to all cases and they do not attempt to do so. The preservation, however, of the estate from extinction, the defence against hostile litigation affecting it, the protection of it or portions from injury or deterioration by inundation these and such like things would obviously be benefits. The difficulty is to draw the line as to what are, in this connection, to be taken as benefits and what not."

When there is a risk of the debutter property being sold for non-payment of Government revenue or in execution of a decree lawfully obtained against the debutter estate, or when there is a threat of flood or inundation which might damage the properties, the shebait, if he alienates a portion of the property for the purpose of raising money to avoid these evils, would undoubtedly be doing "benefit" to the estate. At the same time, the alienation would also be justified by necessity even according to the definition given by Sundara Aiyer, J. quoted above.

It is well settled that the mere fact that the debutter estate could make some profit out of a particular bargain or there is an immediate increase of its income, would not be grounds sufficient to hold the

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(x) 23 M.L.J. 638 at p. 642.
(y) 44 I.A. 147.

UNIVERSITY OF CALCUTTA ADVANCEMENT OF LEARNING CENTRAL LIBRARY

transaction to be beneficial to the deity. Benefit to the estate does not include financial investments, not to speak of speculative developments (vide Krista Chandra V. Ratan (z) Monohar Das V. Tarini (a).) In the Privy Council case quoted above, their Lordships expressly observed that though money-lending is attractive and lucrative in India, a shebait would not be justified in selling debutter land solely for the purpose of getting capital to embark in the money-lending business. Benefit, therefore, is not synonymous with financial gain. At the same time it would not be quite correct to say that benefit to the estate is confined absolutely to cases of compelling necessity, where the act done is of a purely defensive character undertaken for the protection of the estate already in possession. It was held by the Allahabad High Court in Jado Singh V. Nathu Singh (b) that the term may be held to apply to such a transaction as the sale of inconveniently situated, encumbered and unprofitable property and the purchase in its place of other property. This view was adopted by the Patna High Court in Baidyanath Prasad V. Kunja Kumar (c), where the shebait sold a piece of land which was situated at a place almost unaccessible during the cultivating season and which the shebaits had considerable difficulty in managing. The price fetched was quite adequate and with the sale proceeds a better property was purchased. The act of the shebait was held to be a prudent act by which the idol's estate was benefited.

It is quite possible to conceive of other cases where the transaction, though not absolutely necessary, is still beneficial in the sense that it is dictated by considerations of prudence in the circumstances of a particular case. The case of Hossein Ali Khan V. Mohanta Bhagawan Das (d) may be taken as an illustration of this type of cases. In this case the Nawab of Murshidabad obtained certain rent decrees against Mohanta Tulshi Das in respect of a lease-hold property held by the latter personally under him. In

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(z) 20 C.W.N. 643.
(a) 34 C.W.N. 135.
(b) 48 All. 592.
(c) A.I.R. (1949) Pat. 75.
(d) I.L.R. 34 Cal. 249.

CENTRAL LIBRARY

execution of these decrees, certain properties, which the judgment-debtor purported to hold as shebait of deity Raghunath, were attached. Tulshi Das preferred a claim which was allowed. But as the decree-holder threatened to institute a suit for the purpose of establishing that the attached properties were the personal properties of the judgment-debtor, Tulshi Das made a compromise and under the terms of this compromise Tulshi Das not only paid a large sum of money in part satisfaction of his dues and also assigned to the decree-holder a sum of Rs. 10,000 which constituted the arrears of rent due to him by his raiyats but he further agreed that in case the Nawab Bahadur of Murshidabad failed to realise the arrears of rents from the raiyats, he would be entitled to recover the money from the debutter property. The question arose as to whether the shebait could bind the debutter property by an agreement of this description. It was held that the compromise was binding, it being a prudent step taken by the shebait for the benefit of the debutter estate. The case of Niladri Sahu V. Chaturbhuj Das (e) which was decided by the Privy Council furnishes another illustration of the type of cases where the head of a monastic establishment borrowed money for the purpose of erecting pucca buildings which, though not absolutely necessary for the establishment, were beneficial in the sense that they provided accommodation for Rajas and other wealthy visitors who made handsome presents to the Math.

Necessities of the idol justifying alienation.

The powers of a shebait as has been laid down by the Judicial Committee, in more cases than one, in the matter of alienation of debutter property are akin to those of a manager of an infant heir. The innate difference between a human infant and an idol must however account for differences in regard to their respective requirements. The requirements of an idol as has been stated by Krishnaswami Aiyar, J. in Sreenuth Devasikamony V. Palaniappa (f) must be suitable to the faith, the rituals and the religious traditions of the community for whose ministration it has been set up. Consequently, the requirements

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(e) 53 I.A. 253.
(f) 34 Mad. 535.

CENTRAL LIBRARY

of daily worship, of buildings suitable for the carrying on of such worship and even of festivals intended to cultivate the religious emotions of the public, for whose benefit the temple is dedicated may afford grounds for the alienation of part of the corpus of the property of the temple. The learned Judge however has very appropriately uttered a note of warning in this connection and said that such alienations ought only to be resorted to as extreme measures in the absence of other reasonable means of providing for the needs of the temple and this should be accepted as the test in deciding the validity or otherwise of particular alienations. What religious rites and ceremonies are to be observed in a particular temple would undoubtedly depend upon the directions given by the founder in the deed of dedication and in the absence of any such document, upon the practice, proved by evidence, to have been followed in a particular case. But these rules, as the Privy Council pointed out in the appeal from the Madras case referred to above (g), must not be repugnant to the very nature and purpose of the grant. "If for instance," thus observed their Lordships, "the worship of the idol in the temple be intended to be perpetual, as it could hardly fail to be, then the preservation and use of the dedicated property to support and maintain that worship must, they think, be assumed to have been similarly intended to be perpetual. A rule, therefore, which would authorise and empower the shebait of such a temple, arbitrarily at his own mere will and pleasure, to alienate the dedicated property, either bit by bit or *en bloc*, would be so repugnant to the whole purpose and object of the endowment that it could not, in their view, be rationally held to embody the intention of the original endower."

Suppose that the income of the debutter estate which was originally sufficient to meet the expenses of all the rites and festivals, either directed by the founder or observed in practice since the foundation of the temple, dwindles down, for some reason or other, can it be said in such cases that the shebait can claim to continue the rites and ceremonies in the same scale

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(g) Vide Palaniappa V. Devasikamony—44 I.A. 147.

CENTRAL LIBRARY

as before and go on borrowing money to meet these additional expenses or else alienate the debutter property to make up the deficiency ? The answer must certainly be in the negative. Such conduct would certainly not be that of a prudent manager which is essential to valid alienations of idol's property but would be repugnant to the very object of the grant as the Judicial Committee laid down in the case referred to above. The shebait, in such circumstances, is in duty bound to regulate the scale of service with reference to the reduced income and even some of the unessential ceremonies could be discontinued altogether. It is only when it is impossible to carry on the service and worship of the idol or the essential ceremonies that are necessary to a particular establishment that the shebait can think of borrowing money or to alienate a portion of the debutter property to meet the requirements of the deity (h).

Thus benefit to the institution and justifiable necessity are the criteria to be applied in determining the validity or otherwise of alienation of temple property, and the question in all such cases practically resolves into this, as to whether having regard to all the circumstances of the case, the alienation was a prudent and wise act, having regard to the purpose for which the dedicated property is held by shebait.

Alienation by way of lease.

Strictly speaking, the question of necessity or benefit to the endowment arises when the alienation is of a permanent character. Ordinary, leases of Debutter lands are not only permissible : they are in a sense necessary for the purpose of keeping up the worship of the idol. As Kemp, J. observed in Arrath Misser V. Juggernath (i), "without leasing out the lands it would not be possible for the shebait to provide for the expenses of worship and to carry out the objects for which the lands were endowed." It was held by the Judicial Committee as early as in 1869 in the well known case of Maharanee Shibessouree V. Mathooranath (j) that "in the execution of the office the shebait could not alienate the property though she might create proper derivative tenures and estates

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(h) Vide Nagendra V. Rabindra—30 C.W.N. 389.
(i) 18 W.R. 439.
(j) 13 M.I.A. 270 at p. 275.

CENTRAL LIBRARY

conformable to usage." It was laid down in that case that it would be a breach of duty in the shebait only if he attempts to create a tenancy at a rent which is fixed and unalterable and thereby deprives the endowment of the benefit of augmentation of a variable rent from time to time. To quote the words of Shesagiri Ayyar, J. "a trustee has no right to part wih temple income permanently," and unless there is proof of any justifying necessity such acts would be in excess of his powers and would amount to breach of trust.

Necessity justifying permanent lease.

What is a justifying necessity would certainly depend upon the circumstances of each case. In order to make out a case of necessity for grant of a permanent lease of debutter property at fixed rent, it has to be proved that the entire amount raised as selami was necessary to meet the actual primary pressure on the estate. It must also be shown that the amount actually required for meeting the pressing need could not be raised by a lease for a term or even in perpetuity at a variable rent (k).

In Juggeswar V. Rajah Roodranarain (l), the defendants were already in possession of a debutter property under an izara Potta granted by the shebait for a period of 30 years. There was a debt charged upon the property to the extent of Rs. 3000/-. Two years after the izara Potta was executed, the shebait, who was a lady, created in favour of the defendants, a permanent lease in consideration of which she was not only released from the debt of Rs. 3000/- mentioned above, but also from her obligation to pay compensation to the lessees for the loss suffered by the latter on account of an inundation which took place in the previous year. Furthermore, the amount of rent payable by the lessees was increased, and the lessor got an additional sum of money which was necessary for effecting repairs in the temple. It was held that, in view of all the circumstances, the transaction was one which a prudent and wise man would enter into, and it was upheld as valid and binding upon the debutter. In Tahboonissa V. Koomar Shamkishore (m) the shebait granted a permanent Putni

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(k) Raghumoni Roy, V. Bibhuti Bhusan—64 C.L.J. 65.
(l) 12 W.R. 299.
(m) 15 W.R. 228.

CENTRAL LIBRARY

lease with a view to raise funds for repairing the temple of the idol and to restore the image which had been destroyed by accident. It was held that these were legitimate purposes which justified the alienation, "for if the destroyed image of the idol had not been restored and its temple which was unfit for habitation not repaired Chandra Nath (the shebait) could not have been in a position to fulfil the trust." It was not disputed that the debutter had no other funds from which these expenses could be met. Similarly in Konwar Doorganath V. Ram Chunder (n) a Mourashi Potta of debutter lands was held to be valid by the Judicial Committee on the ground that it was granted in consideration of money said to be required for the repair and completion of a temple for which no other funds could be obtained.

On the other hand in Abhiram Gosswami V. Syamcharan (o), a mourashi Potta granted by the Mohant of an endowment was held not to enure beyond the life time of the grantor as there was no allegation of the existence of any special circumstance or necessity to justify the grant. The whole law on the point was elaborately reviewed by the Judicial Committee in Palaniappa Chetty V. Sreenath Devasikamony (p). In this case also a shebait had granted a permanent lease at a fixed rent and on payment of a premium, of certain lands dedicated to the worship of an idol. It was held that such lease was invalid against the successor as the evidence did not establish that the shebait was constrained by any necessity to make such a lease, or that any benefit accrued to the estate from it. The Privy Council reiterated the proposition of law "that it is a breach of duty on the part of a shebait, unless constrained by an unavoid able necessity, to grant a lease in perpetuity of debutter lands, at fixed rent, however adequate that rent may be at the time of granting, by reason of the fact that by this means the debutter estate is deprived of the chance it would have, if the rents were variable, of deriving benefit from the enhancement in value, in the future, of the lands leased." This principle, it was

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(n) 4 I.A. 52.
(o) 36 I.A. 148.
(p) 44 I.A. 147.

CENTRAL LIBRARY

held by the Judicial Committee, applies as much to agricultural lands as to non-agricultural lands or building sites. The fact that such transaction may be beneficial from the financial point of view and that it would bring in more income if the money obtained thereby was invested in other ways is not at all sufficient to validate the grant (q).

Whether permanent lease could be validated by custom.

Another question which was debated in this case before the Judicial Committee was whether a custom permitting permanent lease of endowed property could be recognised as valid. Their Lordships held that on the evidence adduced in this case such custom was not established. It appears that the Subordinate Judge, in course of his judgment, held that such local usage did obtain in the village in question and such custom was perfectly reasonable and not opposed to public policy. Commenting on this passage in the judgment of the Subordinate Judge, the Judicial Committee observed as follows :

"There could scarcely be a more glaring instance of the misapplication of the word 'custom' or a more remarkable instance of forgetfulness of the essentials of a custom which modifies the ordinary law."

Customs undoubtedly exist as exceptions to ordinary law ; and a custom would override the rules of general law if the essentials of a valid custom are established. One of the essentials is that it must not be unreasonable or opposed to public policy. The observations of the Judicial Committee quoted above do not indicate that such customs are to be regarded as *per se* unreasonable. What their Lordships pointed out in that particular case was that the Subordinate Judge did not advert to the essentials of a valid custom and did not properly appreciate the meaning and significance of a custom which modifies general law. There are, however, expressions of judicial opinion to the effect that a custom sanctioning permanent alienation of debutter property by the shebait without legal necessity is invalid and unenforceable. In Venkataraman Ayyanger V. Kasturi Ranga (r), Shesagiri Ayyar, J. observed in course of his judgment that

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(q) See in this connection Monohar V. Tarini—34 C.W.N. 135.
(r) 40 Mad. 212 at p. 222.

CENTRAL LIBRARY

"time cannot convert such violations of law into recognisable customs. The principle of Hindu law that a custom outweighs the written text of law does not apply to illegal custom." In Karagga V. Devappa (s), a custom of alienability by sale was held to be illegal and unenforceable. There is undoubtedly much to be said in favour of this view ; for a custom of this description which might destroy the debutter altogether and frustrate the very object for which the endowment was created, can hardly be said to be reasonable.

It is not profitable to refer to the various decided authorities where the question was raised regarding the validity or otherwise of permanent leases granted by a shebait of temple property. As has been said already, each case would depend upon its own circumstances. If the rent is not fixed permanently, a *raiyati* settlement, even if it is heritable and transferrable, would be within the competence of a shebait to grant (t). On the other hand it has been held that when the lease was for 30 years, and there was only a nominal enhancement of rent for the renewed period, very strong evidence was necessary to show that the transaction was fair and *bona fide*, though strictly speaking no question of legal necessity arose (u). In Jnanaranjan Banerji V. Adoremoney (v), a permanent lease of debutter property was granted by the shebaits by which the grantor relinquished all future increment in the value of the property for a little more than seven years' purchase of rent arising therefrom, reserving to them almost the same rent that was being raised before the Maurashi lease. No evidence was adduced as to what happened to the money raised by such transaction. It was held that the transaction was not justifiable in the interests of the endowment.

Once a grant of a permanent lease is affirmed by a court of competent jurisdiction, the judgment operates as *res judicata* and the succeeding shebait or Mohant will be bound by it (w).

(s) 26 I.C. 442.
(t) Vide Bhabani Charan V. Suchitra—51 C.L.J. 25.
(u) Vide Syamlal V. Hiranath—(1934) A.I.R. All 685.
(v) 13 C.W.N. 805.
(w) See Moharanee Sibesswari V. Mathuranath—13 M.I.A. 270

CENTRAL LIBRARY

Permanent leases of debutter lands,—whether void or voidable.

When a permanent lease is granted by a shebait of debutter lands without any justifying necessity, the question arises as to whether such transaction is void altogether or is only voidable at the instance of a succeeding manager ? In Nritya Gopal Sen V. Mani Chandra (x), it was held by a Division Bench of the Calcutta High Court that a permanent lease of a debutter property is void altogether if not executed for legal necessity ; and in Monohar Das V. Tarini (y), a contract for such grant made, in the absence of legal necessity, was held to be void and hence incapable of being either ratified or specifically enforced. A contract for a permanent lease of debutter property cannot certainly be enforced in the absence of any legal necessity but when the grant has already been made by a shebait, the correct position seems to be that it is operative at least during the tenure of office of the grantor. The question was elaborately considered by the Judicial Committee in the case of Ponnambala Desikar V. Periyanan (z), and it was laid down after a review of the various authorities on the point that transfer of endowed property, whether it be by the head of a mutt, or the shebait of a family idol, or the *dharmakarta* of a temple all stand on the same footing, and hold good for the period of office of the transferor. In an earlier pronouncement of the Privy Council (a), such result was accounted for by a personal bar or estoppel which prevented the manager from taking steps to avoid his own grant. This, it was pointed out, was not the correct view. As the property vests in the deity and not in the manager at all, it is not possible to invoke the notion of personal bar as regulating the validity or invalidity of the transaction. Then again, the presence or absence of personal interest of the manager in the endowment would hardly be regarded as a deciding factor. Their Lordships quoted with approval certain passages from the judgment of Lord Buckmaster in Subbaiya V.

(x) 12 C.W.N. 63.
(y) 34 C.W.N. 135.
(z) 63 I.A. 261.
(a) Vide Naina Pillai V. Ramanathan—51 I.A. 83.

CENTRAL LIBRARY

Mustapha (b) which in their opinion laid down the law on the subject. The passages stand as follows : "In each case they relate to the effect of an attempt on the part of a trustee to dispose of the property by a permanent mukurrari lease. This, he has no power to do, though he is at liberty to dispose of it during the period of his life and a grant for a longer period is good, but good only to the extent of his own life interest."

Strictly speaking, the period is that of the manager's term of office, and not of his life, for if his office terminates for any reason prior to this death, the interest created by him would also come to an end (c). I will have to come to this matter again in discussing the law of limitation in relation to suits for setting aside alienation of endowed property made by the manager of a religious institution.

Mortgage of debutter property by shebait.

The power of a shebait to contract a loan on a mortgage of the debutter property is, as has been laid down in Hanooman Pershad Panday's case (d), to be measured by the existing necessity for borrowing money. The actual pressure on the estate and the danger to be avoided are the primary matters for consideration, but the loan is not affected by the precedent mismanagement of the shebait, if he acts *bona fide*, and the charge is one that a prudent owner in the position of the manager would reasonably create. If there is no actual pressure on the debutter estate at the date of the loan, the loan cannot be justified. Thus, if there are antecedent claims against the debutter, the major portion of which had become time-barred already and no proceedings were taken for sequestration or attachment of the property, there can be no legal necessity to borrow money to pay such debts (e). On the other hand, if there is existing necessity which justifies the loan, it is not material that the necessity was due to the extravagant habits of the borrowing shebait or his predecessor. What 'existing necessity' means was discussed elabo-

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(b) 50 I.A. 295.
(c) Vide observations of Lord Russell of Killowen in Mohunt Ram Charan Das V. Nourangi Lal 60 I.A. 124, 132.
(d) 6 M.I.A. 393.
(e) Vide Rum Churn V. Namboo—14 W.R. 147.

CENTRAL LIBRARY

rately by the Judicial Committee in Niladri Shahoo V. Mohunt Chaturbhuj Das (f), and it was held with reference to the earlier pronouncement of the Board in Prosunno Kumari V. Golab Chand (g). that it is the immediate and not the remote cause, the *causa causans* of the borrowing which has to be considered. In this case, the immediate cause of the borrowing was the mutt's need of money to carry on and pay for its services : the remote cause of the mutt's need was due to the profligate expenditure of the shebait. It would have been no answer, according to their Lordships, to the creditor's suit to say, "Oh ! your money was only borrowed because the income of the mutt was spent by a profligate shebait, and there was no money available to carry on the services of the mutt."

In Niladri Shahoo V. Mohunt Chaturbhuj Das (h), the shebait of a temple in order to raise funds for building as *annexes* to the temple, a lodging house for rich disciples and a dining hall for sadhus, borrowed from 1891 onwards various sums of money aggregating to Rs. 9,337, repayable with interest at two per cent. per mensem. In order to pay off this debt which with accumulated interest amounted to Rs. 25,000/- in 1906, he borrowed the amount on a mortgage of some of the debutter properties, the stipulated interest being only 1 per cent. per mensem. On the mortgagee instituting a suit to enforce the mortgage, the defence taken was that the mortgage was invalid by reason of absence of any legal necessity. The courts below held that no necessity was proved and passed a money decree against the mortgagor personally and refused a mortgage decree or any relief against the property. The Judicial Committee reversed this decision and held that even admitting that the original loan was not contracted for legal necessity, the endeavour to discharge it and reduce the interest by means of a mortgage on less onerous terms was a sufficient indication of existing legal necessity to validate the mortgage. "Even if

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(f) 53 I. A. 253.
(g) 2 I.A. 145.
(h) 53 I.A. 253.

CENTRAL LIBRARY

the building scheme of the defendant had been reckless, inconsistent, unsound and liable to fail, which has not been proved," thus observed their Lordships, "what drove him to borrow this money, Rs. 25,000/- on mortgage was to pay old debts, and so be relieved of the oppressive burden which the exorbitant rate of interest at which these earlier loans were made imposed upon him. It was the high rate of interest, which he was already bound to pay, that was the necessary and immediate cause of his giving this mortgage, though the remote cause of it was the getting into debt by the building operations." In their Lordships' view, the principle enunciated in the case of Prosunna Kumari V. Golab Chand (i) applied to this case.

Form of the decree to be passed in creditors' suits.

The decree passed in this case, however, was not an ordinary decree for sale. There was a personal decree made against the mortgagor in the first place, and in the event of his failing to pay the money, it was directed that a Receiver should be appointed to realise the rents and profits of the endowed estate, and the Mohunt's share after payment of a maintenance allowance to be fixed by the court, should be allocated for payment of the plaintiff's debt.

You will notice that although the Judicial Committee held definitely in this case that there was legal necessity justifying the mortgage, yet the decree passed was, in substance, a personal decree. In the event of the failure on the part of the shebait to pay the money, a Receiver was to be appointed of the rents and profits of the debutter, and only the shebait's share in the income after providing for him maintenance allowance was to be appropriated for the payment of the decretal dues. It cannot be said that this must be the usual or the proper form of decree in all cases where there is a mortgage of debuter property to meet the necessities of the endowment. If, as has been laid down by the Judicial Committee over and over again, the authority of the shebait of idol's estate is analogous to that of the manager of an infant heir, it would folow that although the property devoted to religious purposes is, as a rule, inalienable, it is

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(i) 2 I.A. 145.

CENTRAL LIBRARY

competent to the court to direct the sale of such property if it is satisfied that the loan was raised for a necessary purpose. This view which was taken by the Patna High Court in Mohunt Mahabir Das V. Jamuna Prosad (j) seems to be perfectly sound. The appointment of a Receiver cannot be a convenient or proper remedy in all circumstances. In Vibudhapriya V. Lakshmindra (k), the head of a mutt borrowed money for meeting the expenses of a periodic festival at a temple, which, by ancient usage, included the feeding of all Brahmin pilgrims, and also the cost of rebuilding the dining hall. It was an unsecured debt, and there was no mortgage or charge created on the property. It was held by the Judicial Committee that as these matters were regulated by custom, and the pilgrims had a time honoured right to share in the food offerings when they gathered at the festival, it was difficult for the head of the institution to go against these usages. As the money was borrowed for purpose of the temple, and not for his own purpose, and the money was legitimately applied for those purposes, the debt was binding on the mutt.

The Judicial Committee passed a decree in this case on the analogy of that made in Niladri Shahoo's case (l). The guardian of the defendant was directed to pay the money with interest at contract rate within three months from the date of the arrival of the records in the court below, and failing that a Receiver was to be appointed to collect the rents and profits of the mutt property and the proceeds from the offerings, and after the payment of all expenses connected with the mutt and the performance of the ceremonies and festivals and a reasonable provision for the maintenance of a superintendent, the balance was to be applied in the discharge of the plaintiff's debts.

It will be seen that the decree in this case though similar to that in Niladri Shahoo's case (l), differs in one material aspect from the latter. In Niladri Shahoo's case, the mortgage money was payable out of the shebait's share in the income of the debutter

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(j) I.L.R. 8 Pat. 48.
(k) 54 I.A. 228.
(l) 53 I.A. 253.

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property which really belonged to him personally, and not out of the rents and profits of the endowment, less the expenses of the deity and maintenance allowance for the shebait, as was done in Vibhudapriya's case (m). It cannot be disputed that when the debt is contracted for legal necessity, the money due could be realised from the debutter property no matter whether the debt was a secured debt or not. If a mortgage or charge is created, ordinarily there should be a decree for sale, but in lieu of passing an ordinary mortgage decree, the payment of the mortgage money could be directed from the rents and profits of the debutter property after meeting all necessary expenses of worship and management. But as a shebait is not necessarily entitled to a share in the income of the debutter property as his personal emolument, a decree in the form made in Niladri's case (n) could not possibly be passed in all cases. It should not, at any rate, be passed when the mortgage money is large, and it would take an inordinate length of time before it could be satisfied from the shebait's share of the debutter income. A decree in such terms, it seems, would be most proper, when the claim is laid against the shebait personally, and he has no other property except his emoluments or share in the debutter income from which the decretal dues could be realised. This would be in accordance with the principle enunciated by the Judicial Committee in the case of Nawab Bahadur of Murshidabad V. Karnani Bank Limited (o).

Sale of debutter property. Is the sale void altogether in the absence of legal necessity ?

The sale of a debutter property by a shebait is *prima facie* an act amounting to a breach of trust, and to make it binding on the endowment, imperative necessity must be proved, or else it must be established that the purchaser did make enquiries and satisfy himself in good faith that such necessity existed. When there is no justifying necessity for a sale of debutter property is the transaction void altogether and the purchaser acquires no interest in the purchased property ? The answer is the same as has been given already in the case of alienation by way

(m) 54 I.A. 228.
(n) 53 I.A. 253.
(o) 35 C.W.N. 791.

CENTRAL LIBRARY

of permanent lease. The transfer is valid during the life time or the tenure of office of the alienating manager, and the possession of the alienee becomes adverse to the endowment when the alienating shebait ceases to be manager by reason of death, retirement or otherwise. This proposition was laid down authoritatively by the Judicial Committee in the case of Mohunt Ram Charan Das V. Naurangilal (p), and though that was a case of mutt property, the same principle applies to a debutter as well. The doctrine was affirmed and reiterated by the Privy Council in the subsequent case of Mahadeo Prosad V. Bharati (q). There is no distinction, as the Privy Council points out, between a disposition purporting to be a grant of a permanent lease and a purported out and out grant by way of an absolute sale. In each case, the disposition by the manager is good and effective as long as he continues to be manager.

Sale void altogether if the entire endowed property is transferred, or any property is sold as the personal property of the shebait.

If, however, as has been said already, the alienation is not of particular items of endowed property, but of the endowment as a whole, the transfer is wholly void, and the transferee does not acquire any title to the property. This is illustrated by the decisions in Jnanasambandha V. Velu Pandaram (r) and Damodar Das V. Lakshman Das (s), where the assignment or disposition was of the mutt and all its properties. Even if the subject matter of disposition is only a particular item or items of endowed property, the endowment should be deemed to be void if the property was sold not as debutter property, but as the personal property of the shebait, and taken as such by the purchaser. A shebait or a manager has the right to alienate portions of endowed property only for purposes of legal necessity. He may exceed his powers, but if the transfer of the deity's property is by the manager as such, the transferee should, at least, acquire an interest which would be valid during the life time of the transferring manager ; but if the manager transfers the property belonging to the deity as his own property, asserting his own personal

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(p) 60 I.A. 124.
(q) 62 I.A. 47.
(r) 27 I.A. 69.
(s) 37 I.A. 147.

CENTRAL LIBRARY

interest in the same, the act itself is adverse to the trust. The transferee in such cases cannot acquire any title to the property (t).

The same principle applies to a mortgage sale.

The same principle would apply to a sale in execution of a mortgage decree. A mortgage sale cannot, strictly speaking, rank as an involuntary sale, for it presupposes a voluntary act in the form of a mortgage on the basis of which the decree is passed and the property is sold. Whether the possession of the purchaser at a mortgage sale is or is not adverse to the endowment, would depend upon the fact as to whether the mortgage was executed by the manager, as manager, on behalf of the deity or in his own personal capacity as secular owner of the property, in denial of the rights of the deity. In the first class of cases, the mortgage is not void altogether and the purchaser at a mortgage sale would at least acquire an interest which will enure during the term of office of the manager. If on the other hand, the manager asserts his own individual ownership in the property in denial of the rights of the deity and purports to act not as shebait but as proprietor in his own right, the purchaser at the mortgage sale would not acquire any right to the property and it would be a void purchase altogether (u).

Sale in execution of a money decree.

A sale in execution of a money decree, however, stands on a different footing. If the decree in execution of which the sale takes place was passed against a shebait in his representative capacity as representing the deity, the execution sale cannot be impeached at all and the purchaser acquires a valid title to the property. If on the other hand, the decree was against a shebait personally the purchaser at a sale in execution of such decree would not acquire any title and the sale would be a void sale. The possession of such a purchaser would be adverse from the very beginning. This was what happened in the case of Subbaiya V. Mustapha (v) and the Privy Council held and quite rightly that the possession of the auction purchaser became adverse from the date

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(t) Vide Hemanta Kumari V. Iswar Sridhar Jew—50 C.W.N. 629.
(u) See Hemanta Kumari V. Sridhar Jew—50 C.W.N. 629, approved of in Palanibala V. Kali Pada—54 C.W.N. 960.
(v) 50 I.A. 295.

CENTRAL LIBRARY

of the purchase. This decision has been followed and the principle applied in a very recent pronouncement of the Judicial Committee which is to be found reported in Sudarsan Das V. Ram Kripal (w). In this case, one Priyadas, the Mohunt of Birpur Asthal lent 500 Mds. of grain to Damodar Das, the then Mohunt of Pokrauni Asthal. The loan was not repaid and on 6th of May 1913, Priyadas obtained a money decree against Damodar Das personally for a sum of over Rs. 1,500/-. In execution of this decree a four annas' share of a property belonging to Asthal Pokrauni was sold in 1914 and it was purchased by Priyadas himself and he got possession in 1915. In 1933 the successor to the Asthal Pokrauni brought a suit against Sudarsan Das, the present Mohunt of Birpur Asthal, claiming to recover possession of the 4 anna's share of the property sold in execution of the decree mentioned above, on the ground that the property being endowed property belonging to the deity, the predecessor of Sudarsan did not acquire any interest by his purchase. The High Court decreed the suit having held in concurrence with the trial judge that there was no legal necessity for the loan. On appeal the Privy Council set aside the judgment of the High Court and dismissed the suit on the ground that it was barred by limitation. It was held that the sale of the debutter property in execution of a money decree against a shebait personally was a void sale altogether and the possession of the auction sale purchaser became adverse to the endowment from the date of the sale.

In the case of Ronald Duncun V. Sri Sri Ishwar Damodar Jew (x), this principle was sought to be applied to a mortgage sale as well. This is clearly against well established principles of law, but as in that case the property was held not to be debutter property at all, the expression of opinion on this point cannot rank higher than a mere *obiter dictum*. It may be noted that the decision in Ronald Duncan V. Sri Sri Ishwar Damodar Jew (x) has been expressly

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(w) 77 I.A. 42.
(x) 62 C.L.J. 10.

CENTRAL LIBRARY

dissented from by the Patna High Court in Sri Thakurji V. Muthro Prasad (y).

Alienation when there is part justification.

It happens sometimes that in a suit to set aside an alienation of endowed property on the ground that it is not supported by legal necessity, it is established by evidence that part only of the money received by such transfer was necessary for the idol or was represented to have been so required and this was believed by the grantee. The Privy Council in Koonwar Doorganath V. Ram Chandra (z) held that where there is part justification, the sale could not be cancelled in its entirety, and in such cases, the plaintiff who wished to set aside the sale should offer to reimburse the *bona fide* purchaser so much of the money as had been legitimately advanced. The implication possibly is, that if this is done, the sale would be set aside on terms. At any rate, in subsequent decisions the principle adopted in suits by the reversioner to set aside alienation made by a Hindu widow which is supported in part by legal necessity, has been, to set aside the sale on terms, on the plaintiff making good to the purchaser the amount of consideration money for which there was legal necessity (a). As has been laid down in Hanuman Pershad Panday's case (b), the alienee is not bound to see whether the money paid by him was used properly for purposes of the deity ; and even if the transferor had no intention of applying the money obtained to meet the necessities of the idol, the transferee is not affected by such fraudulent intention unless he was aware of it (c).

Burden of proof in suits to set aside transfer of debutter property.

Where an alienation of a temple property by a shebait is impugned, the burden is upon the alienee to show that the transaction was for legal necessity, or that he made *bona fide* and proper enquiries to satisfy himself that the necessity actually existed (d). But though a manager for the time being has no power to make a permanent alienation of endowed property in the absence of proved necessity for the alienation,

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(y) A.I.R. (1941) Pat. 354.
(z) 4 I.A. 52.
(a) See Deputy Commissioner of Kheri V. Khanjan Singh—34 I.A. 72.
(b) 6 M.I.A. 393.
(c) See Koonwar Doorganath V. Ram Chandra—4 I.A. 52.
(d) See Koonwar Doorganath V. Ram Chandra—4 I.A. 52 ; Bawa Magneeram V. Kasturbhai—49 I.A. 54 ; Murgasam Pillay

CENTRAL LIBRARY

yet when there is a long interval of time between the alienation and the challenge of its validity, it is a circumstance which enables the court to presume that the original grant was made in exercise of the extended power of the shebait (e). In Murugasam Pillay V. Manikyavasaka (f), the head of a mutt had borrowed money on a mortgage of the mutt property. The binding nature of the debt was recognised by successive managers who paid, from time to time, interest on the money and other amounts towards the discharge of the debt for a period of 26 years. It was held by the Judicial Committee that having regard to the fact that the debt had been recognised as binding and dealt with on that basis for a long period of time, there was sufficiency of evidence to show that the loan was made for purposes binding on the mutt and there was no evidence to the contrary. In Bawa Mugneeram V. Kasturbhai (g), the validity of a permanent lease granted by a shebait was questioned nearly 100 years after the grant was made. As it was not possible to ascertain the circumstances under which it was made, it was held that the court should assume that the grant was made for legal necessity. These Principles were applied by the Supreme Court of India in Sree Sree Gopal Jew V. Protapmull (h), and it was held that where the validity of a permanent lease granted by a shebait is called into question a long time after the alienation is made, the circumstances which could be gathered from the recitals together with the fact that the document had remained unquestioned for more than half a century were quite sufficient to support the conclusion that the grant of a permanent lease was made for legal necessity and was binding on the deity. As the Privy Council laid down in the case of Banga Chandra V. Jagat Kishore (i), if there is a recital of legal necessity in an old document and the parties to the transaction and all those who could have given

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Pillay V. Manikyavasaka—40 Mad. 402.

(e) See Chockalingam Pillay V. Mayandi—19 Mad. 485.

(f) 40 Mad. 402.

(g) 49 I.A. 54.

(h) A.I.R. (1951) S.C. 214 approving Protapmull V. Iswar Gopal—48 C.W.N. 172.

(i) 43 I.A. 249.

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evidence on the relevant points have grown old or passed away, a recital consistent with the probabilities and the circumstances of the case assumes greater importance and cannot be lightly set aside ; at any rate, "if the circumstances are such as to justify a reasonable belief that an enquiry would have confirmed its truth, then when proof of actual enquiry has become impossible, the recital coupled with such circumstances would be sufficient to support the deed."

Alienation of debutter property with leave of court.

A question has arisen in several cases as to whether an alienee of endowed property is protected, if the alienation by way of sale, mortgage or permanent lease is made with the leave of court. The decided cases show that such permission is obtained either under the Indian Trusts Act, or where the manager happens to be an infant, by his guardian, under the Guardians and Wards Act. Different views have been expressed as to the precise legal effect of such sanctions given by the court. One view is that an order of the court giving such permission is conclusive on the question of due enquiry, which is all that is necessary to be made by a creditor or alienee, and unless it is proved that he was a party to a fraudulent misrepresentation to the Judge who made the order, alienation cannot be impeached (j). Another view is that the order of the court may constitute *prima facie* evidence of necessity, but this is capable of being rebutted (k). The third and the last view is that if the alienation is challenged at a future date, the alienee in spite of the order will have to prove as a fact that there was legal necessity for the transfer or that he made enquiries and was reasonably satisfied that such necessity existed.

The last view seems to be the correct view to take, and it is fortified by more than one pronouncement of the Judicial Committee. A shebait is not a trustee in the proper sense of the word and the Indian Trusts Act has no application to the case of a Hindu religious endowment. The Court, therefore, has no jurisdiction to grant an application by a shebait to sanction his

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(j) See Mahabir Das V. Jamuna—8 Pat. 48.
(k) See Pasupatinath V. Pradyumna Kumar—63 Cal. 454.

CENTRAL LIBRARY

transaction on the ground of necessity, or to quote the language of Ammer Ali, J. "to grant as it were a certificate of 'necessity'" (l). So far as the permission under the Guardians and Wards Act is concerned, the observations of the Judicial Committee in Ramkrishna V. Ratan Chand (m), suggest that in spite of the court passing an order under the Guardian and Wards Act, the purchaser is not absolved from his liability to make the necessary enquiries and in the event of the minor challenging the transaction even after the leave is obtained, the mortgagee will have to prove that he had made independent enquiries and was *bona fide* satisfied as to the power of the manager to enter into the transaction (n). In Basudeo V. Mohunt Jugal Kishore (o) which went up to the Privy Council, the facts are that J. a mohunt, appointed the first respondent as successor and left a will whereby he appointed C. as the minor's guardian. J. had mortgaged the Asthal property. The mortgagee, after his death, brought or threatened proceedings on the mortgage. To pay off these liabilities, C. who had proved the will and had been acting as the guardian of the minor and manager of the asthal property obtained leave from the District Judge to sell and accordingly sold a share of the asthal property in order to pay off the liabilities. It was held that C. who was acting as executor to the will of J. or as guardian of the minor mohunt did not possess larger powers than the actual mohunt, and that in the absence of proof that the original debts were binding on the asthal, the sale must be set aside.

This pronouncement of the Judicial Committee can be said to be a settler on the point. Leave of the court by itself does not help the alienee in any way, and such leave cannot enlarge the powers of a manager or his guardian. The utmost that can possibly be said is that the purchaser in proving that he made enquiries could, to a certain extent, rely upon the fact that

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(l) Vide Sree Sree Iswar Narayan Jiu V. Soler—(1937) 2 Cal. 133 at p. 135.
(m) 58 I.A. 173.
(n) Per Kania, J. in Re Dattatreya Govinda Holdankar—56 Bom. 519, at p. 525.
(o) 22 C.W.N. 841.

CENTRAL LIBRARY

an application was made to the court, and that the court made an order on the application, as part of the evidence in support of his case, though they are not by themselves sufficient to absolve the purchaser or the mortgagee from making enquiries into the matter (p).

Limitation for suits to set aside unauthorised alienation by manager of endowed property.

The law of limitation relating to suits to set aside unauthorised alienation of endowed property by a shebait or a mohunt was in a state of considerable uncertainty prior to the decision of the Judicial Committee in Vidyavaruthi V. Balusami (q). Since then, the Legislature has made certain amendments in the Indian Limitation Act by introducing Articles 134A, 134B, 134C and 48B in schedule I to the Act and by adding a new paragraph to section 10. It would be convenient for our purpose first of all to refer briefly to the law as it stood prior to the amendments mentioned above, and then indicate to what extent the new amendments have altered the law on the subject. Prior to the decision in Vidyavaruthi's case there was considerable diversity of Judicial opinion in India on the question of limitation in respect to suits for recovery of endowed property improperly alienated by the manager of an endowment. The prevailing view seemed to be that when a mohunt or shebait transferred a property belonging to a mutt or idol to a stranger, the period of limitation would begin to run from the date of alienation and not from the date on which the succeeding shebait or mohunt came into office. Reference may be made in this connection to the cases of Nilmoni Singh V. Jagabandhu (r), Dattagiri V. Dattatraya (s), Narain V. Sri Ram Chandra (t) and Beharilal V. Md. Muttaki (u).

The majority of the decisions proceeded on the view that the person who alienated endowed property was in the position of a trustee, and consequently the case was governed by Article 134 of the Indian Limitation Act as it then stood and time ran from the date

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(p) Vide the observations of Kania, J. In re Dattatreya Govinda Holdankar—56 Bom. 519 at p. 525.
(q) 48 I.A. 302.
(r) 23 Cal. 536.
(s) 27 Bom. 363.
(t) 27 Bom. 373.
(u) 20 All. 482.

CENTRAL LIBRARY

of transfer. In some of the cases, however, Article 144 was held to be the proper article to apply. Thus in Nilmoni V. Jagabandhu (v), Banerjee, J. observed as follows :- "The idol is a juridical person capable of holding property as has been authoritatively settled by the decision of the Privy Council in the case of Sheebesharee V. Mathooranath (w), and the possession of the defendants who profess to derive title not from the idol, but ignoring its rights must be taken to have become adverse to the idol from the dates of the two alienations which are more than twelve years from the date of the present suit." On the other hand, there are certain cases, although few in number, which adopted the view that a mohunt who had at least a life interest in the property could not create any interest superior to his own and an alienee from the mohunt could only take an interest commensurate with the mohunt's life, and if he remained in possession after the death of the mohunt, the succesor would have a cause of acton from the date of election (x). In Vidyabharuthi V. Balusami (y), the Judicial Committee definitely laid down that Article 134 has no application to cases of this description. It was said that neither under the Hindu Law nor under the Mohammedan Law is any property conveyed to a shebait or mutwalli in the case of dedication, nor is any property vested in him. Whatever property the shebait or mohunt holds for the idol or the institution, he holds as manager with certain beneficiary rights which are regulated by custom or usage. Alienation by shebait or mohunt cannot therefore be treated as an act of trustee to whom the property has been conveyed in trust within the meaning of Article 134 of the Limitation Act. As article 134 has no application, such cases would fall within article 144 of the Limitation Act, and the question would arise as to when did the possession of the alienee become adverse to the endowment. It was held by the Judicial Committee that the possession did not become adverse during the life time of the alienating mohunt as he was

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(v) 23 Cal. 536.
(w) 13 M.I.A. 270.
(x) Vide Mohunt Baraswami Das V. Khashia Jha—20 W.R. 471.
(y) 48 I.A. 302.

CENTRAL LIBRARY

competent to create an interest commensurate with his life ; on his death, the possession of the alienee would become adverse, but if the alienation was by way of lease, and the lessee's possession was consented to by the succeeding manager, there would be no adverse possession till a fresh succession took place (z).

The position, therefore, is that except where the new Articles apply,—and it is to be noted that the new Articles came into force on and from the 1st January, 1929,—Article 144 is the proper Article which would govern suits for recovery of possession of property improperly alienated by the manager of an endowment, and the period of limitation is 12 years commencing from the point of time when the possession of the alienee became adverse to the endowment. In Vidyavaruthi's case, the transfer was by way of permanent lease, and it was held by the Judicial Committee that the possession did not become adverse until the determination of the office of the alienating manager by death or otherwise. Soon after the decision in this case, a question arose as to whether the same principle was applicable when the transfer was not by way of a lease, but by way of a sale out and out. There was some conflict of opinion expressed on this point by the Indian High Courts, but the conflict was set at rest by the Judicial Committee in Mohunt Ram Charan V. Nourangilal (a), and it was held that in case of a sale out and out of particular items of endowed property, the possession of the transferee would not be adverse until the alienating manager ceases to be manager by reason of death, retirement or otherwise. The same view was taken in Mahadeo Prasad V. Bharathi (b). The correct principle deducible from these cases is that the possession of the alienee would become adverse as soon as he is without any title to the property. If the transfer is void *ab initio*, the possession of the transferee is adverse from the date of the transfer. If, on the other hand, it is not void, but voidable merely at the instance of the succeeding manager, the possession

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(z) See the whole law discussed in Protapmull V. Iswar Sridhar Jew —48 C.W.N. 172.
(a) 60 I.A. 124.
(b) 62 I.A. 47.

CENTRAL LIBRARY

cannot be adverse until the office of the transferring manager ceases (c).

I have said already under what circumstances a transfer by a manager is void *ab initio*. In the first place, if the transfer is not of particular items of property, but of the entire endowment with all its properties, the possession of the transferee is unlawful from the very beginning. The decisions in Jnana Sambandha V. Valu Pandarum (d) and Damodar Das V. Lakshman Das (e) are illustrations of this type of cases. In the second place transfer would be void and limitation would run from the date of the transfer, if the manager transfers the property as his own property and not as the property of the deity. As has been explained already, the same principle applies to sales in execution of a mortgage decree against the shebait when the mortgagor purported to mortgage the property not as debutter property but as belonging to him personally (f). In other cases where the mortgage is by shebait as such, time would certainly run from the date when the office of the mortgagor ceases by death or otherwise (g). In a sale in execution of a money decree against the shebait personally the possession of the execution sale purchaser is void from the very beginning and possession being adverse time runs in his favour from the date of the sale (h).

This is the law which governs cases where the new articles of the Limitation Act are not applicable, and it may be stated here that the new Article 134B, as its language shows, does not apply to a sale of debutter property in execution of a decree. This is laid down, and quite correctly, by the Privy Council in Sudarsan Das V. Mohunt Ram Kripal (i) referred to above. As Lord Radcliffe pointed out in that case, to apply Article 134B to an execution sale would involve a reading of that Article which would construe the words "transfer by previous manager for a valu-

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(c) See Hemanta Kumari V. Iswar Sridhar Jiu—50 C.W.N. 629.
(d) 27 I.A. 69.
(e) 37 I.A. 147.
(f) See Hemanta Kumari V. Iswar Sridhar Jiu—50 C.W.N. 629.
(g) Subbaya V. Mustapha—50 I.A. 295.
(h) See Subbaya V. Mustapha—50 I.A. 295 ; Thakurji V. Muthro—A.I.R. (1941) Pat. 354 ; Sudarsan V. Ram Kripal—77 I.A. 42.
(i) 77 I.A. 42.

CENTRAL LIBRARY

able consideration" as being an execution sale under court processes and the word "transferor" as extending to the judgment-debtor whose land is sold. Such construction is manifestly unsound. All cases for recovery of possession of immovable endowed property sold in execution of a decree would, therefore, be governed by Article 144 of the Limitation Act even though the sale took place after the 1st January, 1929 when the new Articles became operative.

The operation of the new Articles is thus confined to voluntary alienations only.

Where the new Articles apply, a suit by the manager of a religious or charitable endowment to recover possession of immovable property comprised in the endowment which has been transferred by a previous manager for valuable consideration is governed by Article 134B, and it must be brought within 12 years from the date of death, resignation or removal of the transferor. When the property sold is movable property in an endowment, Article 134C lays down the period within which a suit for recovery of possession of such property should be instituted, and the period is also 12 years from the date of death, resignation or removal of the seller. You will notice that the *terminus a quo* for the period of limitation in suits of this description is the date of death, resignation or removal of the transferor. In a sense, the legislature adopted the principle which the Judicial Committee enunciated in Vidyavaruthi's case, though it has deliberately avoided all questions of adverse possession and has rigidly fixed the starting point of limitation at the date of death or cessation of office of the manager. It is also immaterial that there was an interval of time between the death of the manager who transferred the property and the appointment of his successor. Time begins to run not from the date when the successor assumes office, but from the date when his predecessor vacates it. Article 134A relates to suits filed not by the succeeding manager of the endowment who seeks to recover possession of the property alienated by his predecessor, but by persons interested in the endowment to set aside alienations made by the manager. Apparently such suits could be instituted even during the life time or tenure of office of the alienating manager,

CENTRAL LIBRARY

and the period of limitation prescribed is twelve years from the date when the transfer becomes known to the plaintiff. It seems that in a suit of this description, the plaintiff cannot claim recovery of possession of the property for himself. Whether he can claim that possession may be restored to the endowment is a debatable point in respect of which there appears to be no clear authority, either one way or the other. If the law is settled that the transfer is operative, at least, for the period of office of the transferor, it is difficult to see how any interested person can claim restoration of possession of the property so long as the alienating manager remains in office. A suit contemplated by this Article is really in the nature of one which the reversioner can institute during the life time of the widow and which is justified on the ground that material evidence on the question of legal necessity might be lost if the suit is brought after the death of the transferor. Article 48B is the counterpart of Article 134A as regards movable property sold by the manager and the period of limitation is three years from the date when the fact of sale becomes known to the plaintiff.

When do the new Articles apply?

The amending Act I of 1929 being the amendment of a Statute of limitation is ordinarily retrospective in its operation, both as regards the period and *terminus a quo* and consequently where transfers took place within 12 years of the commencement of the amending Act and the right had not become barred by lapse of time when the Act came into force, the amending Act would apply (j).

As said above, the amending Act of 1929 has added a new paragraph to section 10 of the Limitation Act which runs as follows :—

"For the purposes of this section, any property comprised in a Hindu, Mahommedan or Budhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose, and the manager of any such property shall be deemed to be the trustee thereof." Thus although the manager of a Hindu, Mahommedan or Budhist religious or charitable institution is not a trustee, for purposes of

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(j) See Palanibala V. Kali Pada—54 C.W.N. 960.

CENTRAL LIBRARY

section 10, the endowment is deemed to be property vested in such manager as trustee for specific purposes and the manager shall be deemed to be trustee thereof. The result is that as against the manager and his legal representative or assigns, not being assigns for valuable consideration, the suit to follow the trust property in his or their hands or the proceeds thereof or for an account of such property or the proceeds thereof would not be barred by any length of time. The question may have to be discussed further in a later lecture when we come to deal with remedies for breaches of trust on the part of the shebait or manager.

Shebait cannot assert adverse title.

A shebait who has accepted the office of a shebait or acknowledged himself as such is incapable of asserting any hostile title against the idol or setting up *jus tertii* in others. This disability is implicit in any person who holds a fiduciary position in relation to another. Furthermore, unlike a human beneficiary, an idol cannot act except through a natural person, and normally, the personality of the idol is bound up with that of the shebait. As was pointed out by Rankin, C. J. in Surendra Kristo V. Shree Shree Iswari Bhubaneswari (k), if after a shebait has accepted the trust, there is a change in the intention with which he holds the deity's properties, and he applies the rents and profits of the property to his own purposes, the idol's title cannot be affected thereby. Any change of intention on the part of the shebait can be brought home to the idol by means of the shebait only, and the idol can react to it through the shebait. Adverse possession in such circumstances is a notion wholly devoid of contents. Suppose that the shebait of a family deity goes on appropriating the income and profits of the debutter solely to his own purposes. The other members of the family can certainly bring a suit against such shebait on behalf of the idol, but such persons have no legal duty to protect the endowment, and until the shebait is removed or controlled by the court, he alone can act for the idol. If however, the shebait did not accept the trust at all, there is no bar to his holding the property adversely to the

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(k) 60 Cal. 54, 77.

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deity. A man is not born responsible as shebait and does not become shebait against his will.

A somewhat difficult question arises when a man holding the office of shebait as well as personal properties of his own, dies, and both his secular properties and the rights of the shebait devolve upon his successor under the ordinary law of inheritance. If the successor takes possession of the trust property, can he claim to hold adversely to the deity? The answer to this question, it seems, would depend upon the fact as to whether the trust was accepted by him or not. As has been said above, nobody is born responsible as a shebait. If before taking possession of the debutter property, he repudiated the trust, and purported to take possession of the property in his own right, adverse to the deity, there is nothing in law which stands in the way of his asserting an adverse title, but once he has taken possession of the property in the character of a shebait, it would not be competent to him to deny the trust, and assert the rights of a secular owner. This seems to be the implication of the decision in Surendra Kristo V. Shree Shree Iswari Bhubaneswari (l) referred to above. In that case, Satya who was one of the heirs of the last shebait, and upon whom the office devolved under the law of inheritance, was held capable of acquiring title by adverse possession against the deity as he never accepted the position of the shebait and acted as such. If a trustee does obtain a proper discharge from the trust with which he clothed himself, there are authorities to show that he can after the discharge assert a title of his own even against the trust (m).

Shebait not to profit by trust property

A shebait like a trustee in English law must not use or deal with the debutter property for his own private advantage (n). He must not import the trust money into his own business or use it for his own financial gain. If he does so, he will be regarded as a constructive trustee for the profits he made. He cannot lend the idol's money to himself, and generally speaking he cannot enter into any engagement or

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(l) 60 Cal. 54.
(m) See Srinivash Moorthy V. Venkata—34 Mad, 257.
(n) See Underhill on Trust, 7th Edn. page 315; Webb V. Earl of Shaftesbury—7 Ves. 480; Ex parte Lacey—6 Ves. 625.

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contract in which his personal interest may conflict with his duties. As a corollary to this doctrine, a shebait cannot purchase a debutter property of which he is the shebait even when the sale is in execution proceedings, and the shebait has paid the full market value of the property (o).

It is a rule of law firmly laid down by the Equity Courts in England that a trustee for sale is absolutely incapacitated from purchasing the trust property, either through himself or through his colleagues, however fair that transaction may be (p). The question whether the trustee has in such cases made an unfair gain or advantage does not arise for determination at all. The *cestui que trust* is always at liberty to set aside the sale and take the property back. A trustee may, indeed, acquire property from beneficiaries who are sui juris, but he can do this if he has made the fullest disclosure to them of the relevant and material facts within his knowledge affecting or likely to affect the value and advantage of the estate, and it has to be proved further that he and the beneficiaries were at arms length and no confidence was reposed on him (q). In Peari Mohan V. Monohar (r), there was a decree against the debutter to the extent of Rs. 49500/-. In execution of this decree, one of the debutter properties was put up to sale, and it was purchased for a sum of Rs. 1,56,600/-, the ostensible purchaser being the son of the shebait himself. A suit being instituted by a presumptive shebait to set aside the sale and to remove the shebait from his office, it was found that the purchase was made *benami* by the shebait himself in the name if his son, though the price paid was quite adequate. The trial court dismissed the suit. On appeal, it was held by the Calcutta High Court that the sale was not operative against the debutter, and it was held by the Judicial Committee that though "shebait" and "trustee" are not identical terms, the rule forbidding the purchase of an estate by a person who stands in regard to his dealings with it in a fiduciary relationship is general

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(o) See Peari Mohan V. Monohar—48 Cal. 1019 P.C.; 48 I.A. 258.
(p) See Fox V. Macreth—2 White and Tudor Leading cases 709.
(q) See Underhill on Trusts, Art. 54.
(r) 48 Cal. 1019 P.C.

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in its application, and applies to receivers and other persons clothed with fiduciary authority. Stress was laid by their Lordships upon the fact that the shebait in this case attempted to conceal the fact that he was the real purchaser by making the purchase in the name of his son. Such thing might easily be made a cloak for improper and dishonest transaction, and following the principle laid down in Lewis V. Hillman (s), it was held that such purchase should not be allowed to stand.

Duty of shebait to keep regular accounts.

As recipient of the income of the debutter property or the offerings that are made to the deity, the shebait is responsible for the due application of the deity's income and is bound to render accounts of his management. He is bound to keep regular accounts of the income and the expenses. The way in which the accounts are kept depends to a large extent upon the custom obtaining in a particular institution, and the usual custom may be followed so long as it does not serve as a cover to fraud or dishonesty (t).

Shebait not to mix deity's money with his own.

A shebait must take care not to mix the idol's money with his own private funds. When such a mixture has taken place either through inadvertance or design, the rules laid down by Equity Courts in England in the matter of following mixed funds in the hands of trustees can be applied. Where the trust money is capable of being traced or identified, the fiduciary will have a charge or lien on the whole mixed fund (u). If it is incapable of being traced, the trustee can only be proceeded against personally (v).

Right to reimbursement.

In preparing accounts, the shebait is entitled to claim reimbursement for what has been properly spent by him in the preservation of the endowment, in performing the duties imposed upon him by the grantor, and also in defending his own position as shebait (w). A trespasser who usurps the position of a shebait or mohunt cannot certainly claim reimbursement, and he has no authority to charge the debutter estate for any payments that he might have

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(s) (1852) 3 H.L.C. 607.
(t) Vide Thackersay V. Hurbhum—8 Bom. 432, 470.
(u) See in re Hallet's Trust, Knatchbull V. Hallet—13 Ch.D. 696.
(v) Underhill on Trust, Art. 87.
(w) See Peari Mohan V. Narendra—36 I.A. 37.

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made (x). But when a person in possession of the debutter property, under the decree of a court, makes necessary payments for the preservation of the estate and the decree is subsequently reversed and the right of shebaitship is adjudged to his opponents, he should be recouped for what he has so paid, to his opponents who ultimately were benefited by such payments (y).

De facto shebait not a trespasser nor a constructive trustee.

In this connection, I desire to warn you that you must not regard a *de facto* shebait as a trespasser. I have already said that a *de facto* shebait can maintain an action for recovery of possession of debutter property. A *de facto* shebait is one who is in possession of the debutter as a shebait and manages the property as such though the legal title may be lacking. His position is quite different from that of a trespasser who asserts a title of his own adverse to the deity. Both a *de jure* and a *de facto* shebait can be an express trustee, and it is not correct to say that a *de facto* trustee or a trustee *de son tort* is in the eye of law a constructive trustee. A constructive trust, as was pointed out by Woodroffe, J. in Badridas V. Choonilal (z), is a trust which arises not by act of parties, but by operation of law, where a trustee gains some personal advantage by availing himself of his position as such.

Title to office of shebait by adverse possession.

If any person, without any title to the office of shebait, holds it for a length of time adversely to the rightful claimant, he can acquire a title to it by such adverse possession under Article 124 of the Limitation Act if the office was a hereditary one (a). A trusteeship with power to appoint a successor is an estate well known and recognised by law and may be prescribed against (b) and such rights can be claimed and acquired not only by the individual but by or on behalf of a joint family as such (c). Where the office is non-hereditary the period of limitation is governed by Article 120 (a).

(x) See Ram Churn V. Nanhoo—14 W.R. 47.
(y) See Dakshinamohan V. Sarada—20 I.A. 160.
(z) 33 Cal. 789.
(a) See Palanibala V. Kalipada—54 C.W.N. 960.
(b) Vide Annasami Pillay V. Ramkrishna—24 Mad. 219.
(c) See Bhagaban V. Narain—A.I.R. (1946) Pat. 27.

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I will discuss later on after I have dealt with the other form of endowment, known as *mutt*, the remedies open to parties interested, when a shebait commits breach of trust. I will close this lecture by describing to you briefly the circumstances under which the office of a shebait comes to an end.

Termination of the office of shebait.

The office of a shebait would naturally come to an end upon his death. As has been said in the previous lecture, when an idol is founded, the office of a shebait remains vested in the founder and his heirs

By death.

in default of evidence to show that he has disposed of it otherwise. When the founder has appointed a shebait, and the appointee dies, whether the shebaiti right would go back to the founder and his heirs, or would devolve upon the natural heirs of the shebait would depend upon the terms of the grant Where the appointment is only for the life time of the grantee, obviously on his death, the rights would revert to the grantor and his heirs. In case the right was made heritable in the appointee, it would devolve like any other species of heritable property upon his heirs at law. A shebait cannot nominate his successor unless such powers are expressly given by the grant or are recognised by the rules and usages of the foundation (d). When the shebait having the powers of nomination dies without exercising the powers, the endowment reverts to the founder (e). The same result follows if the line of succession originally indicated by the founder fails or comes to an end (f).

By resignation or relinquishment of office.

A shebait, it seems, is not bound to continue to act as shebait once he has accepted the office. He can, if he so chooses, resign his office voluntarily and give up the trust. In English law a trustee can retire when there is a provision to that effect in the trust deed, or if his retirement is consented to by all the beneficiaries or sanctioned by the court (g). There is no such restriction in the Indian law fettering the right of the shebait to resign or relinquish his office and the word "resignation" occurring in the third column of Articles 134B and 134C in Schedule I of

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(d) See Narayan V. Shiromoni—52 C.L.J. 78.
(e) See Sitaldas V. Protap Chandra—11 C.L.J. 2.
(f) Monohar V. Peari Mohan—30 C.L.J. 177.
(g) Vide Underhill on Trusts. Art. 68.

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the Limitation Act makes it clear that the Legislature contemplates the cessation of office of shebait or mohunt by voluntary resignation. When a shebait relinquishes his office, the result is that he thereby accelerates the succession to the office of the next shebait. The same principle applies under which a Hindu widow can surrender her estate in favour of the next reversioner (h). No particular form of relinquishment is necessary and it would be enough if the intention to walk out of the office without any reservation is established by proper evidence.

It has been held in a Calcutta case (i) that a shebait being manager loses his office if he ceases to manage the property and carry on the worship of the idol. The proposition, it seems, has been stated rather too broadly. The fact that a shebait does not perform his duties properly may be a ground of removing him from his office, but by itself, it would not be sufficient to terminate his office except that it may be treated as evidence of relinquishment. To establish relinquishment in law, an actual relinquishment must be proved.

By subsequent disability.

A shebaitship, as has been explained already, is a property, and once it has vested in a person, he cannot be divested of it by reason of subsequent disability. In Nirmal Kumar V. Jyotiprosad (j), it was held that a shebait who was of sound mind when the shebaitship devolved upon him does not lose his rights by subsequently becoming insane, nor do his rights remain suspended so long as disability lasts except in cases where the duties imposed upon him are of such a character that they cannot be discharged by a representative. The effect of apostasy or change of religion upon the rights of a shebait has already been discussed. It has been held that unchastity of woman is not a ground for removal from the office of shebait (k).

By removal.

A shebait who is guilty of misconduct or abuse of his position as a trustee can be removed by the court in a proper judicial proceeding. What reasons

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(h) Vide Girish V. Upendra—35 C.W.N. 769.
(i) Bhuban V. Narendra—35 C.W.N. 478.
(j) (1941) I.L.R. 2 Cal. 148.
(h) Vide Girish V. Upendra—35 C.W.N. 769.

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are sufficient to justify removal of a shebait cannot be formulated exhaustively. The matter is within the exercise of a sound judicial discretion by the court. There must, however, be a clear necessity for interference to save the endowed property (l). It was observed by the Judicial Committee in Gulzarilal V. The Collector of Etah (m) that "the standard of rectitude and accuracy expected from every trustee of charitable funds is of the highest, and that standard must in all circumstances be maintained by the court if the safety of property held upon such trusts is not to be imperilled throughout British India." In that case, there were concurrent findings by both the courts below that there was misappropriation of trust funds by the trustee and conversion of trust property to his own use, and in view of these findings, the Judicial Committee declined to interfere with the decree appealed against even though it was proved that the trustee had at an earlier stage rendered services of immense value to the trust estate. The assertion of a right to treat the endowed property as his own property or a claim to apply the trust funds to his own private purpose would be enough to justify a removal (n). It is a sufficient ground for removal, if in the exercise of his duties, the shebait places himself in a position, in which the court thinks, he can no longer discharge the obligations of the office faithfully (o). When there is a gross abuse of his fiduciary position, it is not necessary that there should be actual misappropriation or that the deity must actually suffer loss (p). These questions would have to be taken up again in a later lecture where remedies for breaches of trust by shebaits would come for consideration.

(l) See Monohar V. Peari Mohan—30 C.L.J. 177, 189.
(m) 35 C.W.N. 699.
(n) Chintamoni V. Dhando—15 Bom. 612.
(o) See Peari Mohan V. Monohar—48 Cal. 1019
(p) See Nirmal V. Jyoti—(1941) 2 Cal. 128.

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LECTURES VIII & IX.

Religious Institutions or Mutts.

Administration of Mutts—legal status, rights, duties and powers of Mohant.

Meaning of Mutt.

Having dealt with religious trusts known as debutter, the essential element in which is a deity or an idol, we now come to the other and equally important type of Hindu religious endowment which is described as *Mutt* or *Muttum*. "Mutt" in ordinary language signifies an abode or residence of ascetics. In legal parlance it connotes a monastic institution presided over by a superior and established for the use and benefit of ascetics belonging to a particular order who generally are disciples or co-disciples of the superior.

Four-fold division of life in Vedic Age not compatible with monasticism.

I have already told you in the introductory lecture that the four-fold division of life as laid down in Vedic Grihya Sutras does not sanction mendicancy or asceticism till at the last stage of the life of a twice born person. The Vedic seers never countenanced the doctrine of negation of life. On the other hand, the division of life into four stages which "was the outcome of the extremely analytical mind of the Indian Aryans adjusted in a splendid way the two opposing tendencies which often exist side by side in man—the acceptance of life in its fullness and the rejection of it" (a). Every Hindu belonging to the twice born classes had, in ancient days, to pass the first stage of his life as a Brahmachari or student when he had to live with his preceptor under strict discipline and in an atmosphere of intense moral purity till he finished his studies. It was the sacred duty of a twice born to marry and become a householder after finishing his studies, the only exception being made in case of Naistik Brahmacharis or perpetual students who were permitted to remain celebates to enable them to prosecute their studies with

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(a) Vide Pandit Nehru's Discovery of India p. 61.

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single-minded devotion so long as they lived. A *Grihasta* or a house-holder was enjoined to retire from the world at a certain age when his desire for worldly enjoyment would naturally ebb away and he passed the third stage of his life in forest retreats in company with persons of the same order, spending his days in study and religious practices. The fourth and the last stage of life was that of a *Jati* or Sannyasi or contemplative ascetic, when his thirst for life was quenched and he passed his days as a wandering ascetic living on roots or herbs or what was voluntarily given him by other people. Monastic institutions in the proper sense of the expression were unheard of in the Vedic Age.

The Smriti writers following the traditions of the Vedas made specific provisions for succession to the property of persons who were not only house-holders but belonged to the other three stages of life. Thus Yagnavalka lays down "The heirs to the property of a Brahmachari (life long student), a yati (ascetic) and a Vanaprastha (hermit) are respectively the preceptor, a virtuous pupil and a religious brother residing in the same holy place" (b). It seems that many of the Vedic institutions showed signs of disintegration towards the close of the Vedic age. Historians tell us that prior to the advent of the Buddha, there were wandering ascetics of various descriptions who not only did not conform to the Vedic ways of life but on the other hand propounded heretical doctrines which were contrary to those embodied in the Vedas (c). But even then we do not find any trace of monastic institutions in the pre-Buddhist Age.

Monastic institutions established in India by Buddha and his follow-ers.

Monastic life in the proper sense of the term was introduced into India as the result of the Buddhist doctrines. Buddhism was really based on a negation of life and it encouraged asceticism and voluntary celibacy. The Buddhist monks or Sramans were at first very like wandering ascetics, but as their number increased, it became necessary to provide for them food and shelter and frame disciplinary rules for their guidance. Gradually a sort of corporate

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(b) Yagnavalka Ch. II v. 137.
(c) Vide Rhys Davids—Buddhist India p. 144.

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life came into existence amongst the monks and as I have told you already, the Buddhist congregation which went by the name of *Sangha* had like the Christian Church a corporate life and a jural existence. The Buddhist monasteries, which were the gifts of the lay Buddhist to the congregation were of various types and bore various names. They were generally known by the name of Bihars or Sangharams. Detailed rules relating to these monasteries and for regulating the conduct of the monks are to be found in the Vinaya Pitaka which is one of the three sacred books of the Buddhist.

Hindu revival and Sankaracherya.

I have told you already that side by side with the rise of the Mahayana School of Buddhism, the Pouranic form of Hindu religion began to be more and more popular in India and the Gupta Emperors who flourished between the 4th and the 6th century A.C., were great patrons of the Pouranic faith. Buddhism was rapidly declining during this period and it was almost a decayed religion in India by the end of the 7th century A.C. The period that followed witnessed a glorious revival of Hinduism and at the vanguard of the new movement stood no less a person than the great Sankaracharya who is admittedly one of the greatest philosophers and spiritual leaders that the world has ever produced. Sankaracharya crushed the decaying remnants of effete Buddhism and helped in reviving the Hindu religion, not so much the rituals and sacrifices associated with the Vedic Age, but the sublime philosophy of the Upanishads on the basis of which he propounded his cerebrated non-dualistic doctrines. Though a man of rare spirituality, Sankar combined in him philosophical knowledge with uncommon sagacity and practical wisdom. In spite of his being a philosopher of the monistic type, he did not discourage the popular form of worship for the masses and in spite of opposition to Buddhism did not hesitate to adopt the Buddhist system of monasticism which he considered to be suitable to the then conditions of society. The Vedic scheme of life had practically fallen into disuse during the Buddhist period and Sankar's idea was to make the monastic institutions established by him repositories of spiritual knowledge and culture, on the pattern of the Bihars and Sangharams of the

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Buddhists. Supremely intelligent and learned as he was, Sankar gave the whole thing a Vedic garb. The Vedas sanctioned the life of an ascetic at the closing period of one's life and normally those who became ascetics had been married men and householders before, who took to retirement as the fitting sequel to an active worldly career. There is, however, a text in the Vedas which allows a man to renounce the world at any period of his life even though he has not married and become a householder provided he develops within him a complete detachment to the things of enjoyment either of this world or of the next. (यद हरेव विरजेत तद हरेव प्रव्रजेत।) Undoubtedly this was meant to be an exception and not the rule but Sankar made use of the text for the purpose of giving the sanction of the Vedas to the order of monks which he founded and organized and who were regarded as belonging to the fourth stage of life according to the rules of the Vedas, although many of them might not have passed through the stage of married life at all. The monks ordained by Sankar and his followers were called Sannyasis or Jatis as the fourth Ashramites were called in Vedic language and rules were framed for their discipline and guidance.

Hindu Mutts established for the first time by Sankar.

Thus Hindu Mutts were established for the first time by Sankar. He himself founded four Mutts at the four corners of India and made them centres of his Vedantic teachings. In the east he set up the Gobordhan Mutt at Puri, in the north the Jyotir Mutt at Badrinath ; in the west there was the Saroda Mutt at Dwarka and in the south the Sringeri Mutt on the Tungabhadra. Each one of these Mutts was placed in charge of one of his four principal disciples who were Padmapad, Hasthamalak, Sureswar and Trotaka. These four disciples had disciples of their own and in course of time ten orders or classes of monks were formed, into which the monks of the Sankar School stand divided even at the present day. These ten orders popularly known as Dasnamis bear the appellations of Tirtha, Asram, Ban, Aranya, Giri, Parvat, Sagar, Saraswati, Bharati and Puri. Tradition has it that of these ten classes, Tirtha and Asram were attached to Saroda Mutt in Gujarat, and Ban and Aranya to Gobordhan Mutt at Puri. The disciples of

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Jyotirmutt at Badrinath were Giri, Parvat and Sagar, while Sringeri Mutt claimed as its adherents Saraswati, Bharati and Puri (d). In addition to the Sannyasis who belonged to the fourth stage of life, there were Naistick Brahmacharis or perpeual students attached to all the Mutts. The monks or Sannyasis of Sankar's School cannot marry or have any connection with the world. The ceremonies which have to be performed when a man enters the monastic order are of the highest spiritual significance and I would have occasion to refer to them in details later on.

Whether Sudras can become Sannyasis?

The disciples of Sankar were all Brahmins and according to the rule laid down in *Sanyas Grahan Padhati* the authorship of which is imputed to Sankar himself, only the twice born people can become Sannyasis of the Dashnami order. As the four stages of life have been prescribed in the Vedas, only for the twice born, no Sudra can strictly speaking become an ascetic and that is the view entertained by the Smriti writers. According to Mitakshara, only the Brahmins can enter the fourth Asram of life and are eligible to become Sannyasis and this view is supported by certain passages from Manu where प्रव्रज्या or exit from the house has been spoken of or prescribed for the Brahmans alone, and a text of Sruti which says "The Brahmins should become ascetics." According to Nirnaya Sindhu, which has been quoted in West and Bhuler's Digest of Hindu Law (e), a Khatriya and Vaisya can also enter into an order of Sannyasis. Upon a review of all these authorities, it was held by the Madras High Court in Dharampuran V. Virapandiyam (f), that a Sudra cannot become a Sannyasi under Hindu Law and consequently the devolution of property of a Sudra who purported to renounce the world and become an ascetic would be governed by the ordinary law of inheritance. The same view was taken by the Calcutta High Court in Harish Chandra V. Atir Mahamed (g). It is to be noted, however,

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(d) Vide J. C. Ghosh's Law of Endowment p. 243.
(e) Third edition p. 555.
(f) I. L. R. 22 Mad. 302.

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that this strict view of the Smriti writers does not accord with actual practice. Not only a large number of monastic institutions have been established by Sudra ascetics in southern India but there are various religious sects, chiefly amongst the Vaishnabs, amongst whom caste distinction is unknown and who have no objection to initiate Sudras into their brotherhood. According to the Tantras, whose injunctions are said to be binding in the Kali Age, the old Vedic Asrams or divisions of life no longer exist, and there are only two Asrams, namely, those of (1) Grihastas or householders and (2) Abadhutas or ascetics. In the fold of Abadhutas, all persons including Sudras could be admitted (h).

Practice of establishing Mutts followed by Ramanujam and other religious Teachers.

The practice of setting up Mutts as centres of theological learning which was started by Sankar was followed by almost all the religious teachers since then. After Sankar came a galaxy of Vaishnab teachers and philosophers who founded the different sects of Vaishnabism that we find in India even at the present day. The first in order of time was Ramanujacharya who propounded the theory of qualified monism in opposition to pure monism of Sankar. Sankar's theory was based upon rigorous logic and recognising as it did the Supreme Brahman as the only one and absolute reality, it regarded every thing else as phenomenal or illusory. Ramanuja and the other Vaishnab teachers who followed him were all philosophical theists and they tried to reconcile their metaphysical doctrines with the demands of human heart which always required a Personal God as the supreme cause of all that exists and an eternal soul which yearns for an approach to and union with that Being. According to Ramanuja, the Supreme Being together with individual souls and the material world constitute one integral whole and neither the individual soul nor the external world, though dependent on God, are devoid of reality. The followers of Ramanuja are known as Sri Vaishnabas, as the object of their adoration is Supreme being in the form Vishnu

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(g) I. L. R. 40 Cal. 545.
(h) See Mahanirban Tantra Ch. VIII quoted in G. Sarkar's Hindu Law Chap. XIV (8th Edition).

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who is always associated with Sri or Lakshmi. On the model of Dashnami Mutts of Sankaracharya, Ramanuja founded a large number of Mutts for the purpose of strengthening the doctrines propounded by him. According to tradition, the number of Mutts founded by him came up to 700. Of these four only are to be found at the present day.

Ramanand and his school.

Ramanand, whom tradition speaks, and that incorrectly, of being a disciple of Ramanuja founded a sect of Vaishnabs known as Ramats which contains a large element of ascetic population who are to be found in Benares, Ajodhya and certain other parts of Upper India. Ramanand is said to have himself built a Mutt for the ascetics of his sect in Benares and there are several Ramat Mutts even now at Benares. Ramanandi Mutts consist solely of celibates. They admit Sudras and lower caste men in their brotherhood and obey no caste rules at all. The Ramats worship one God in the form of Rama and they call themselves Dasses or servants of the Lord (i).

Madhawacharya.

Madhawacharya, the founder of the Madhawa School of Vaishnabas, is another Vaishnab saint who came into this world by the end of the 12th century A. C. Madhawa philosophy is pure dualism. Like all religious teachers who follow the path of devotion as the only means of obtaining salvation, he recognised an eternal distinction between the infinite God and the finite souls of individuals. Eight Mutts at Udipi are associated with his name. The superiors of Madhawa Mutts are all Brahmin ascetics who faithfully observe the vow of celibacy and are generally adopted when they are very young. The Madhawa ascetics carry Danda or the staff and the water pot in the same way as Dashnami Sannyasis do. Their wearing apparel is also much like that of the Sankar sect (j). The South Kanara Manual, published under the authority of the Government, contains the following description regarding Madhawa Mutts. "The temple of Krishna, at Udipi, is said to have been founded by Madhavacharya himself who set up in it the image of Krishna originally made by Arjuna and

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(i) Vide J. C. Ghosh's Law of Endowment p. 248.
(j) See Hindu and Mahommedan Endowment by Ganpati Iyyer page 249.

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miraculously obtained from a vessel wrecked on the coast of Tuluva.....Besides the temple at Udipi, he established eight 'mathas' or sacred houses, each presided over by a sanyasi or swami. These exist to this day and each swami in turn presides over the temple of Krishna for a period of two years and spends the intervening fourteen years touring throughout Kanara and the adjacent parts of Mysore levying contributions from the faithful for the expenses of his next two years of office, which are very heavy as he has to defray not only the expenses of the public worship and of the temple and matha establishments, but must also feed every Brahmin who comes to the place" (k).

Nimbarka and Ballavacharya sects.

There are two other well-known sects of Vaishnabs in India, of which the founders were Nimbarka and Ballavacharya respectively. The Nimbarka sect is known as Sanakadi Sampradaya, while the sect of Ballavacharya is called Rudra Sampradaya. In the Nimbarka sect, the disciples are divided into two classes, namely, (1) ascetics or Birakatas and (2) householders or Grihastas. They have Mutts for their ascetics near about Muttra.

The Ballavacharees are influential Vaishnaba sects in Western India. They have got large temples, the richest being the one situated at Nathadwara of which the head is one of the descendants of Ballavacharya. The Ballavacharees do not attach any value to celibacy or the rigours of ascetic life. They marry and enjoy the pleasures of life like ordinary people. The descendants of Ballavacharya are given divine honours and worshipped as gods. Their Mutts are really temples and the worship of God in the twin form of Radha and Krishna is the sole duty enjoined on their followers.

School of Sri Chaityanna of Nabadwip.

The .system of .Vaishnabism founded by Sri Chaityanna Mahaprabhu of Nabadwip (Bengal) is another popular system which has numerous followers in Bengal, Orissa and some parts of U. P. near-about Brindabon and there are several Mutts in these places founded by the Vaishnabas of this sect. Though regarded as a branch of the Madhawa School, the sect

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(k) See 54 I. A. 232.

CENTRAL LIBRARY

of Sri Chaityanna has important differences with the Madhawas both as regards philosophical doctrines as well as rites and ceremonies that are observed in their institutions. Caste distinctions are not followed in Sri Chaityanna Mutts and people even of the lowest classes are admitted into them.

With the exception of the Mutts belonging to the sects of Ramanuja and Madhawa, it is in fact the characteristic feature of many of the Vaishnaba institutions that they receive Sudras and married men in their community. A Vaishnaba Mutt is known by the name of Asthal in northern India. There are both celibate and non-celibate disciples attached to such institutions, though on the death of the superior, the succession generally devolves upon one of his celibate disciples (l).

Mutts of Sudra ascetics.

I have told you in my first lecture that the practice of establishing Mutts which began with Brahmin ascetics gradually spread to the Sudras and in course of time it was adopted by dissenting religious sects like the Jains, Kabir Panthis, Nanak Panthis, Jangamus and others who do not believe in the authority of the Vedas or in the tenets of orthodox Hindu religion. With regard to the origin of Sudra Mutts in southern India, it was pointed out by the learned Judges of the Madras High Court in Giyana Sambandha V. Kandasami (m) that "when Brahminical creed and system of religious doctrines were adopted by the Sudras in the Tamil districts, the order of ascetics and the practice of instituting Mutts as centres of religious study, instruction and charity came into prevalance amongst them. Pious and learned ascetics amongst them accentuated by desire to disseminate religion and promote religious charity established Mutts at Tinnevelly, Trichonopoly, Tanjore and elsewhere."

A Brahmin ascetic as said above is known as Yati or Sanyasi ; a Sudra Sanyasi on the other hand is called a Pardeshi. If a Sudra is attached to a Adhinam, he is called a Tambiran and if he is at the head of the Adhinam, he bears the name of Pandara Sannadhi. "The term 'Adhinam' signifies the seat

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(l) See Ram Prakash V. Anand—43 I. A. 73.
(m) 10 Mad. 375 at p. 386.

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of the chief ascetic at the head of the religious association or brotherhood and takes its name from the village in which it is situated" (n). A Sanyasi when he becomes the superior or head of a Mutt is called Mohunt, Mathadhis, Mathadipathi or Swami.

Essential features of a Mutt distinguishing it from debutter.

The rules guiding these institutions of diverse types which have their origin in customs and usages followed by different religious orders vary widely from each other but nevertheless there are certain common features which are the essentials of a monastic institution and distinguish it from an endowment of the debutter type which we have discussed in the previous lectures. It would be convenient at this stage to refer to some of these prominent characteristics.

Presiding element in a Mutt is an ascetic or a religious teacher, not an idol.

The primary distinction between a debutter and a Mutt lies in the fact that unlike debutter where the essential or central part of the institution is a deity or idol, the presiding element in a Mutt is an ascetic or religious teacher who together with his disciples and co-disciples form a sort of spiritual family. Both a Mutt as well as a debutter owe their existence to benefactions or grants of property made by pious benefactors. In one case the grantee is an idol for whose ministration or service the debutter is created ; in the other case the result of the benefaction is the creation of an institution for the benefit of a fraternity of religious men at the head of which stands the superior or Mohunt, who represents the entire institution. Ordinarily an ascetic who renounces the world and devotes himself to religion, owes no property except perhaps his cloth, sandals, religious books and the like. He has no fixed place of residence and moves from place to place accepting such food and lodgings as are provided for him by pious house-holders (o). But if a pious ascetic gathers round him a number of disciples whom he initiates into the mysteries or tenets of his order and such of his disciples as intend to become ascetics renounce all connections with their family and claims to family wealth, and affiliate themselves so to say with the spiritual teacher, a spiritual fraternity would eventually grow up. If now gener-

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(n) Giyana Sambandha V. Kandasami—10 Mad. 375 at p. 385.
(o) Giyana Sambandha V. Kandasami—10 Mad. 375.

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ous persons endow the fraternity with property which vest in the preceptor for the time being and a home is created for the brotherhood, a Mutt or Muttum would be constituted (p).

Once a Mutt is established, succession to headship takes place within the spiritual family according to the usages that grow up in a particular institution. In a debutter on the other hand, the receipient of the property is the deity as a juristic person and the Sebaiti rights, unless otherwise disposed of, remain in the family of the donor and they devolve according to the ordinary laws of inheritance.

Differences in the objects of the two types of endowment.

The differences in the origin of the two types of endowment account for a vital difference in their respective objects. The primary object of a debutter is to perpetuate the worship of a deity and the celebration of its rights and festivals in a particular way. There may be provisions for charities by way of feeding the poor etc. in debutter endowment as an adjunct to the worship of the deity, but they are by no means essential. The primary purpose of a Mutt on the other hand is to encourage and foster spiritual learning by maintenance of a competent line of teachers who impart religious instructions to the disciples and followers of the Mutt and try to strengthen the doctrines of the particular school or order of which they profess to be adherents. There is no doubt whatsoever that in former times these monastic institutions exercised considerable influence over the people who were in touch with them and the preceptors were also men who combined in them high standard of spiritual knowledge with moral purity. That is the reason why large grants of land were made in their favour by princes and noble men. As was observed by Subramaniya Ayyer, O. C. J. in Vidyapurna V. Vidyanidhi (q), "The influence exercised by Mutts as centres of learning on the religious and other literature of the country cannot be denied. The varied and well-known contributions made to it by the famous Vidyaranya Swami of the Sringheri or Saroda Mutt or under his auspices are the most conspicuous examples of this kind. There is scarcely a branch of learning consi-

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(p) See Sammantha Pandara V. Sellappa—2 Mad. 175.
(q) 27 Mad. 435 at p. 438.

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dered by Hindus to be important to which Vidyaranya or the scholars whom he gathered round him did not make valuable contributions and it is to his commentaries that the modern world owes its knowledge of the traditional meaning of the oldest of sacred books the Rig Veda."

It canot be denied that the standard has much deteriorated in modern times. High philosophic knowledge or spirituality is seldom to be met with in these institutions. Stress is now laid primarily on the observance of the rites and tenets of the particular sect for the use or benefit of which the Mutt is established. As was observed by Phear, J., in Gossami Doulat Gir V. Bisseswar Gir (r), examples are not rare where the Mohunt either by decline from the strict path of sanctity originally marked out for them or even in prosecution of the founder's purpose make the acquirement of wealth by trade their great object.

Is an idol an essential element in a Mutt?

Opinion has been expressed by several eminent writers that as in the case of debutter, an idol or a deity is also an essential element in a Mutt. It is said that there could be no Mutt without a deity and the deity is the presiding element in both a Mutt and a temple, the worship being prominent in both, though religious knowledge is added to it in one of them (s). If this were a correct statement of law, there would be very little distinction between a Mutt and a debutter. A difference, however, exists and that of a vital nature which cannot be ignored by any means. It is not the object of the Mutt as in the case of debutter to perpetuate the service or worship of an idol in a particular manner, the deity being the recipient and holder of the benefaction. The object of a Mutt as said above is the propagation and strengthening of religious knowledge which might include the doctrines of a particular cult and this is done by maintenance of a competent line of teachers. If the worship of a personal God in a certain form is an essential feature of the religious doctrines of a certain order, obviously the worship of God in that form would be a part of their religious teachings, which it would be the duty of any

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(r) 19 Weekly Reporter 215.
(s) Vide Sarkar's Hindu Law p. 675 (8th Edition).

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Mutt of that order to foster and encourage. But there are religious orders like those of the Sankara School which believe in monistic doctrines of the Vedanta and do not regard the worship of a personal God as a necessary or essential part of the religious teachings. Even in Sankar Mutts there may exist a shrine for a particular idol but it cannot be said that the presiding element in a Mutt must be a deity or that there cannot be a Mutt without an idol. A shrine or a temple may ordinarily be seen as an adjunct to a Mutt, but it is not a necessary one and even when it exists, it is not the chief or the indispensable part of the institution. It is only ancillary to the main purpose for which the Mutt is endowed and the presiding element in a Mutt is always the Mohunt or the spiritual preceptor. It was very properly observed by the Madras High Court in Thamba V. Arundel (t) that a place of worship is not a necessary part of a Mutt though it is often found in such institutions and although primarily intended for the use of inmates, the public may also be admitted to such places of religious worship.

The distinction between Mutt as equivalent to a theological college or monastery and a temple or shrine of the deity is noticed in many earlier treatises. The distinction has been noted in the well known Sanskrit lexicon known as Amarkosh and Medatithi in his commentaries on Manu (u) speaks of *Debayatan* and Mutts separately. No importance can be attached to passages which occur in Kalikapuran and some other later works where Mutts have been described as Sankar's house or god's house. There is no god superior to Sankar says the Kalikapuran and to him therefore the house should be dedicated. Apart from the fact that these are later and sectarian treatises, it cannot be disputed that in a large number of Mutts in India, idols other than Sankar are worshipped.

It may be mentioned in this connection that there are certain public temples e.g. the temple of Vaidya Nath in Santhal Parganas and that of Tarakeswar in Bengal where the office of the high priest is held by

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(t) 6 Mad. 287.
(u) Ch. V. v. 148.

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an ascetic or Mohunt and it devolves in the same way as the rights of a Mohunt or superior devolve on his death. In such cases the rights and powers of the high priest of the temple are assimilated to a great extent to those of a Mohunt of a monastic institution. The institution however does not thereby cease to be a temple. If such institution is described as a Mutt, this is a loose description which does not alter its real or essential character. This was held by the Calcutta High Court in the well-known Tarakeswar case (v).

Entry into religious order ordinarily operates as civil death.

I have already told you that a Mutt or monastic institution presupposes the existence of a spiritual family which is created and continued by adoption. The adoption into a religious order involves certain important legal consequences relating to the status and property rights of the person adopted ; and before I go into details regarding the law of Mutts and Mohunts, it is necessary that I should tell you briefly how a person becomes a member of a religious order and how it affects his existing and future rights. Generally speaking, entrance into an ascetic order operates as a civil death. The man who becomes an ascetic severs his connection with the members of his natural family. It follows, that neither he nor his natural relations can succeed to the property held by the other. If he acquires any property subsequently, it cannot be inherited by his natural relations but passes on his death to his spiritual heirs including his Chela who is recognised as a spiritual son (w).

Ceremonies of initiation.

The Smritis describe in details the ceremonies that are to be gone through by a person who desires to become an ascetic. The rules of initiation adopted by the Sankara school and the different monastic orders in India are based to a large extent on these Smriti texts, though they differ on certain points, both amongst themselves as well as from the rules laid down in the Smrities. But however much they might differ in details, the essential ideas involved in these ceremonies are very much the same, their whole

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(v) First Appeal No. 1/1930 disposed of on 6.2.34.
(w) See Parmanand V. Nihal Chand—65 I.A. 252.

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object being to determine the status of the person as a householder by severing his connection with his family and property and creating a spiritual relationship between him and his preceptor. As regards the order of the Dashnámi Sanyasis founded by Sankara, the ceremonies of initiation are laid down in a treatise known as Sanyas Grahan Padhati. The ceremonies which are modelled on those prescribed in the Smritis are of elaborate character and are characterised by lofty ideas of spirituality and renunciation. They include the shaving of the head, casting off of the sacred thread and distribution of property amongst relations and Brahmins reserving only such amount as would be necessary for the *homa* sacrifice. A postulant has got to perform Tarpan and eight-fold Sradhas, the last of which is Jeeva Sradha or Sradha of his own self and having performed his own death rites which are normally performed by one's relations after his death, he becomes, so to say, dead to the world. Then certain *homam* ceremonies are prescribed, the last of which is Biraja Homa. While offering oblations during the last Biraja Homam he repeats "Om let my mind, understanding, chitta, Ahankar (sense of ego) and the senses be purified. I am light, taintless, desireless, senseless I have become" (x). At the end of the ceremony, the aspirant has no property at all, for even the sacrificial vessels if they are of wood must be burnt in the fire and if they are of metal must be given to the priest (y).

Probationary period before initiation.

According to a decision of the Calcutta High Court (z) every aspirant for entrance into the order of Dashnamis has to pass through a period of probation which may extend to months and even to years during which period it is open to the Chela to revert to his natural family. It is not till the performance of the final ceremony or the Biraja Homam that the aspirant is irrevocably attached to the sect and completely severed from his family. Biraja Homam is thus the essential prerequisite to entrance into a Dashnami order. According to the Madras High

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(x) See J. C. Ghosh's Law of Endowment p. 257.
(y) See Kondol Row V. Swamulavara—40 I.C. 535 at 541.
(z) See Goswami Ramdhan Puri V. Dalmir Puri—14 C.W.N. 191.

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Court (a) the uttering of the press mantram is also essential. This mantra is uttered last after the postulant takes leave of his family and the mantra means that he has given up the three desires i.e. desire for sons, wealth and the world.

The mode of initiation followed by the Vaishnaba ascetics though substantially similar involves difference in the rituals and also in the mantras that are uttered.

Initiation of Sudra ascetics.

As regards Sudra ascetics, a detailed description of the ceremonies of initiation has been given by the Madras High Court in the well known case of Giyana Sambandha V. Kandasami (b). The ceremonies described are undoubtedly those which are followed in the Adhinam at Dharampuram but they may be taken as sample of the forms that are generally gone through in other institutions of a like nature. According to the procedure that is followed in this particular institution, a lay man if he desires to become an ascetic is required to undergo a probation. After the probationer makes some progress in religious study, he is taught a form of prayer called the "Samayam". At a late stage he is instructed in another form of prayer called the "Visesham". The period of probation depends on the discretion of the Pandara Sannadhi. At the end of the probationary period, a day is appointed for initiation and the postulant is summoned by the Pandara Sannadhi to a room in the Mutt which is set up for the worship of the titular deity. There, in the presence of the idol the probationer is formally asked if he gives up his family and his desire for woman and land and if he gives an answer in the affirmative the answer is accepted as a solemn renunciation of the world. The Pandara Sannadhi gives him the *mula mantram* or the distinctive doctrine of his order, invests him with a consecreted cloth and gives for his personal worship an idol made of sandal powder. Then there is a further ceremony at which the Tambiran or disciple makes a gift of his body, soul and wealth to the Pandara Sannadhi.

You will bear in mind that these are ceremonies of initiation by performing which a householder becomes an ascetic. Nobody unless he is formally initia-

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(a) See Rungachariar V. Yegna—13 Mad. 424.
(b) 10 Mad. 375 at 388.

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ted into the order can lay any claim to the office of the superior by succession or otherwise. These ceremonies, however, must not be confused with those relating to the nomination of a Chela by the head of a Mutt or installation of a new Mohunt in the office. These are different matters which I may have to deal with later on.

Can an ascetic acquire and hold personal property ?

As has been said above, when a lay man becomes an ascetic, his connection with his natural family and existing property rights are extinguished. If he acquires any property subsequent to his becoming an ascetic such property passes on his death not to his natural but to his spiritual relations. A pertinent question arises at this stage as to whether it is at all possible for an ascetic to acquire or hold any personal property subsequent to his renunciation of the world ?

Yagnavalka, as stated already, has laid down special rules for succession to the property of ascetics who have been divided into three classes, namely, Brahmacharis, Banaprasthas or hermits and Sanyasis or Yatis. These rules imply that ascetics can have property, though commentators like Vignaneswar, Mitramisra and others have explained the text as referring to the books, cloths, sandals and other articles which are necessary even for an ascetic (c). It cannot be disputed that the very meaning of the word "Sanyas" implies complete renunciation and in fact the ideas of renunciation and acquisition of property are wholly repugnant to each other. There are various texts in Hindu religious treatises which prescribe voluntary poverty for an ascetic and declare acquisition of wealth by religious men as positively sinful ; but the question still arises as to what would happen if in vlolation of these injunctions which are certainly of a religious or moral character a sanyasi does acquire wealth or land ? Does he forfeit his ownership in the acquired property, in other words, is he legally incapable of acquiring any title to it ? The answer to this question has been given by the Judicial Committee in these words :—

"No doubt if a question arises whether particular property acquired by a given individual was acquired

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(c) Vide Mitakhara II. viii. 8 ; Vira Mitrodoy V. iii.2.

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on his own behalf or on behalf of some other person or institution with whom or which he was connected, the circumstance that the individual so acquiring property was a professed ascetic may have importance. But it is out of the question to suppose that a man's religious opinions or professions can make him incapable in law of holding property. He may fail to act up to them, or take heretical and inconsistent views without incurring any penalty or disability in law"·(d). A point often arises as it did arise in this case as to whether, if a sanyasi who acquires property happens to be the superior of a Mutt, the property becomes a part of the endowment itself or at least is presumed to have been acquired with that intention. This question I will discuss later on. But so far as the general question is concerned, it may be taken to be settled law that there is no legal disability in an ascetic to acquire property in the ordinary way however much such conduct might appear to be improper or sinful from the moral or the religious point of view.

Succession to after-acquired property of an ascetic.

According to the text of Yagnavalka referred to above, the property of a life long student goes to his preceptor, of a hermit or Banaprastha goes to his religious brother and that of a Sanyasi or Yati to his virtuous disciple. Naisthik Brahmacharies are very rare now-a-days and if found at all are found attached to Dashnami Mutts. The Banaprastha or the third order of life has become obsolete altogether. The Sanyasis or Yatis though they seldom follow the precepts of the Vedic seers are nevertheless regarded as belonging to the fourth stage of life as laid down in the Vedic Grihyasutras. When a Sanyasi is the head of a Mutt, the succession to his office is, as I shall point out later on, regulated by custom. These customs are of various types, though they seem to be based more or less upon the text of Yagnavalka according to which a successor to a Yati is his virtuous pupil.

No loss of civil status when renunciation is not complete.

You would bear in mind that the consequences attaching to the entrance into a religious order as described above would follow only when there is a real and complete renunciation of worldly interests

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(d) Vide Raghbir Lala V. Mohammed Said—A.I.R. (1943) P.C. p. 7.

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by the persons concerned. If the renunciation is imperfect, there is no loss of civil status. The mere fact that a person declares that he has become a Sanyasi or that he calls himself or is described by others as such or wears cloths ordinarily worn by Sanyasis would not be sufficient to make him a perfect Sanyasi so as to divest him of all property and bring about a civil death. It is necessary that he must completely retire from all worldly interests and is proved to have performed the necessary ceremonies of initiation prescribed for the particular religious order to which he claims to belong (e). In Gouri Sankar V. Naider (f) the Calcutta High Court had to deal with a question of succession to the property of a Brahmin who left his house in early life and settled at Burra Bazar in Calcutta where he lived the life of a Hindu mendicant and performed religious austerities. He dressed himself in ordinary clothes and deposited money with firms in Burra Bazar on interest. He also acquired property in Punjab. It was held in these circumstances that he could not be taken to have renounced the world and become a Sanyasi and therefore after his death his ordinary natural relations were entitled to succeed to his property. In Parshottam V. Desai Bhai (g), a person made a will and became a Sanyasi afterwards. The will expressly stated that it would take effect from the date of his death and not from the date of his becoming a Sanyasi and that he would retain control of his property so long as he lived. It was held that the terms of the will showed that there was no complete renunciation and consequently the ordinary law of succession was applicable to the case.

Vairagees are a class of Vaishnaba ascetics in lower Bengal who do not renounce the world in the proper sense of the word. They buy and sell, marry and have children, in fact they do not give up their household status. In case of Vairagees, succession is regulated by ordinary law and not by the special rules laid down by Yagnavalka (h).

Vairagees are not ascetics in the proper sense.

(e) See Baldeo V. Arya Pritinidhi—I.L.R. 52 All. 789.
(f) 18 C.W.N. 59.
(g) A.I.R. (1932) Bom. 459.
(h) See Teelak Chand V. Shama Charan—1 W.R. 209.

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Succession to property of Sudra ascetics.

I have already told you that according to orthodox Smriti writers, a Sudra cannot legitimately enter into a religious order. Consequently the texts of Hindu Law relating to exclusion from inheritance applicable to a Yati or a Sanyasi do not in terms apply to Sudra ascetics. In this view it has been held in a series of cases that a Sudra ascetic is not incapable of inheriting the property of his natural relations under the ordinary law of inheritance (i). Although orthodox view does not sanction or tolerate ascetic life of the Sudras, it cannot be denied that the existing practice all over India is quite contrary to such orthodox views. In case, therefore, where the usage is established, according to which the property of a Sudra ascetic devolves in the same way as the property of the ascetics of the twice born classes, such usages should be given effect to. This was expressly held in the case of Somasundaram V. Vaithilinga (j) referred to above.

Having cleared these preliminary matters, I would now take up the law of Mutts from where I left and I would state first of all how a Mutt comes into existence before I discuss the legal status of the Mutt and the Mohunt.

Origin of Mutts.

A Mutt like a debutter owes its origin to dedication of property by a donor. A pious ascetic as has been said already gathers round him a number of disciples whom he initiates into the tenets of his order. Pious persons make grants of property for the use and benefit of the fraternity and a Mutt is constituted. For making this grant, no particular form is necessary, nor is it required that there should be a document in writing. If the donor chooses to dedicate property by executing a deed of gift or one of trust, the formalities of such transactions as well as the requirements of the registration law would certainly have to be complied with. But as has been said already, no words of gift either expressly or by way of trust are necessary ; it would be enough if the founder indicates with precision the religious purpose

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(i) See Dharmapuram V. Vira Pandiyam—22 Mad. 302 ; Harish Chandra V. Atir Mohamed—40 Cal. 545 ; Somasundaram V. Vaithilinga—40 Mad. 846.

(j) 40 Mad. 846.

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for which the endowment is made and renounces his interest in the endowed property in favour of the said object (k). These requirements are usually fulfilled by going through the ceremonies of *Sankalpâ* and *Utsarga*, the first of which designates the object of dedication and the second effects a formal renunciation of whatever interest the founder had in the dedicated property. I have already described to you in the introductory lecture the ceremonies in connection with renunciation as prescribed in various ritualistic treatises. Ordinarily in case of Mutts there is a specific human donee to receive the gift. If the Mutt is given to a religious preceptor as representative of a brotherhood of ascetics, the usual formalities of gift including pouring of water on the hands of the donee are gone through. When there is no specific donee and the dedication is in favour of ascetics generally, the libation of water is thrown into a pot. There are treatises again like the Kalikapuran, according to which all Mutts have got to be dedicated to God Sankara. These ceremonies as I have already said in connection with debutter endowment are neither essential nor conclusive. The presence or absence of the ceremonies are only relevant pieces of evidence to be taken into consideration along with other evidence in determining whether the donor genuinely intended to renounce his interest in the property for the accomplishment of the particular purpose.

Mutts as offshoots of an existing institution.

There is another way in which a Mutt can come into existence and that is as offshoot of a Mutt already established. In such cases, the parent Mutt exercises some sort of control over the subordinate institution, which is regulated by usage. The exercise of control often leads to quarrels and this is strikingly illustrated by the disputes that raged between the Adhinam at Dharampuram and its alleged offshoot at Benares which was founded by a Tambiran of the former. The Benares Mutt had several subordinate Mutts under it and one of the ascetics of the Benares Mutt built a Mutt at Tiruppanandal in the south with funds which he brought from Benares. Interesting questions were raised in several cases regarding the rights

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(k) See Bhagabati Prosanna V. Guru Prosanna—25 Cal. 112.

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of the Pandara Sannadhi at Dharampuram over this Mutt at Tiruppanandal (l).

In whom does the Mutt property vest ?

In the case of a debutter endowment the dedicated property vests in the idol as a juristic person, where does the endowed property vest in the case of a Mutt ? The Mohunt or the spiritual teacher is undoubtedly the presiding element in a Mutt but as regards vesting of property, a comparison between the idol and the Mohunt would be misleading and incorrect. The property of the Mutt does not vest in the Mohunt as a debutter property vests in the idol. A Mohunt, as the Privy Council has said, is like the Sebait of a deity the manager of the Mutt property. though he may have larger rights in certain respects than what a sebait has got. He is not the proprietor of the Mutt or its properties, and although in view of his oblilgations and duties he is answerable as a trustee in the general sense for administration of the affairs of the endowment, he is not a trustee in the sense in which it is used in English law. I have told you already in the introductory lecture that in the opinion of eminent judges "the Hindu Law like the Roman Law recognises not only corporate bodies with rights of property vested in the corporations apart from its individual members, but also juridical persons or subjects called foundations" (m). Mutts, Choultries and similar other institutions obviously answer to the description of foundations in Roman Law. When a property is dedicated for a particular purpose, the property itself impressed with that purpose is raised to the status of a juristic person and can become in law the bearer of rights and duties. The Privy Council in Vidyavaruthi V. Baluswami (n) expressly held that religious institutions known under different names are regarded as possessing the same juristic capacity and gifts are made to them *eo nomine*. Unless the terms of the grant point to a different conclusion, the proposition that can be generally accepted is that the endowed property vests in the Mutt itself as a juristic person and not in the Mohunt or superior

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(l) Vide Giyana Sambandha V. Kandasami—10 Mad. 375 ; Kasibasi V. Chitumbernath—20 W.R. 217 (P.C.).
(m) Per West, J. in Manohar V. Lakhiram—12 Bom. 247 at 263.
(n) 48 I.A. 302.

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either as a life tenant or otherwise. The view taken in Vidyapurna V. Vidyanidhi (o) that in case of Mutts the ideal person is the office of the spiritual teacher or Acharya which, as it were, is incarnate in the person of each successive swami who for the time is a real owner and not a mere trustee, is not tenable in view of the later pronouncements of the Judicial Committee. A Mutt like an idol is a juridical person and is capable of acquiring holding and vindicating legal rights through the medium of some human agency which is ordinarily the agency of the Mohunt (p). The position indeed would be different if a formal trust deed is executed. In such circumstances, the legal ownership would vest in the trustees and the superior or Mohunt might be one of the trustees or even the sole trustee if the donor so chooses.

There cannot be a Mutt in the legal sense without a Mohunt or superior, no matter in whichever way he might come into the office. All matters relating to the administration of a Mutt are also intimately connected with the rights and duties of a Mohunt. It is necessary, therefore, to ascertain precisely the legal position of a Mohunt in respect to the Mutt. It may be mentioned here that almost all the decided authorities point to the supreme head of a Mutt being a single person though there may in some cases be a chief or a presiding Mohunt and also other Mohunts of lesser grade (q).

Legal status of a Mohunt.

Before the later pronouncements of the Privy Council cleared up the obscurities on the point, there was a good deal of indefiniteness and want of uniformity in the opinions expressed by Judges in India regarding the true legal position of a Mohunt in respect to the Mutt and its properties. The decision in Sammantha Pandara V. Selappa (r) is one of the earliest pronouncements where this question was discussed by the Madras High Court. It was held in that case that the property is in fact attached to the office and passes by inheritance to no one who does

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(o) 27 Mad. 435.
(p) Vide Babaji Rao V. Laxmandas—28 Bom. 215.
(q) Vide Mukherji, J. in Govind Ramanuj V. Mohant Ramcharan—63 Cal. 326 at p. 343.
(r) 2 Mad. 175.

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not fill the office. It is in a certain sense trust property, but the superior has large domain over it and he is not accountable for the management, nor for the expenditure of the income, provided he does not apply it to any purpose other than what may fairly be regarded as in furtherance of the object of the institution.

In Giyana Sambandha V. Kandasami (s), the learned Judges while discussing the nature and origin of Mutts observed generally that the head of the institution holds the Mutt under his charge and its endowment in trust for the maintenance of the Mutt, for his own support, and that of his disciples and for the performance of religious and other charities in connection therewith according to usage.

Both these decisions, it would be seen, lay stress on the fiduciary character of the head of the Mutt and his obligations in respect to proper carrying out of the objects of the institution, even though he may have wide discretionary powers regarding the application of the income.

In Vidyapurna V. Vidyanidhi (t) on the other hand, this fiduciary character is ignored altogether and the position of the head of the Mutt is assimilated to that of a life tenant or an owner with restricted rights. The question for consideration in that case was whether the head of a Mutt forfeited his rights by reason of his having become a lunatic. The question was answered in the negative. In course of their judgments, the learned Judges compared the position of the Dharmakarta of a temple with that of the head of a Mutt. The Dharmakarta, it was held, is a mere trustee who is to apply the funds at his disposal in carrying out the objects of the trust, such as the conduct of daily worship and the performance of ceremonies. The head of the Mutt, on the other hand, is not a mere trustee but a corporation sole having an estate for life in the permanent endowments of the Mutt and an absolute property in the income derived from offerings subject only to the burden of maintaining the institution. "It will be seen," thus observed Bhasyam Ayanger, J. in his judgment "that the pro-

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(s) 10 Mad. 375.
(t) 27 Mad. 435.

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perty of the Mutt is like the benefice of the Bishop of a Christian Church substantially inalienable; the head of the Mutt for the time being is like the Bishop subject, however, to the limited burden of maintaining the Mutt with absolute domain over the revenues accruing during his life time."

Doubts were raised as to the correctness of the law laid down in the case, in view of what was enunciated in the two earlier cases mentioned above, and a Division Bench of the Madras High Court referred for decision (u), by a Full Bench, the following question :— ,

"Does the head of a Mutt hold the properties constituting its endowments as a life tenant or a trustee ?" The reply given by the Full Bench was that it cannot be predicated of the head of a Mutt as such that he holds the Mutt properties as a life tenant or a trustee. The question must be determined in each case upon the conditions on which they were given or which may be inferred from the long established usage and custom of the institution. Sankaran Nair, J., who was one of the Judges constituting the Full Bench, observed in his judgment that though the head of the Mutt is under a legal obligation to maintain the Mutt, to support the disciples and to perform ceremonies which are indispensable ; yet they are only a charge on the income in his hands. That does not show that the surplus is not at his disposal. The learned Judge further said that a Pandara Sannadhi may be a trustee in respect of some but not as regards other properties of the endowment. The Full Bench, therefore, really decided nothing and left each case to be decided on its own facts. In Muthusamier V. Sree Sree Methantithi (v), the learned Judges though not entirely agreeing with the view taken in Vidyapurna V. Vidyanidhi (w) were inclined to hold that a Mathadhipati is in a position of one who though in a certain sense is the owner in fee simple, yet in many respects has only the powers

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(u) See Sree Kailasam Pillai V. Nataraja—33 Mad. 205 F. B.
(v) 38 Mad. 356.
(w) 27 Mad. 435.

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of a tenant for life. Mr. Justice Sadasiva Ayyar pointed out that the position of a Mathadhipati is not analogous to that of a corporation sole under the English law because there is this fundamental distinction, namely, that whereas the properties belonging to an English Bishop including his savings from the revenues of the benefice devolve upon his legal representatives or heirs, the savings of Mathadhipati devolve upon the succeeding Mathadhipati. Stress was laid in this case apparently on the aspect of the superior as a qualified owner of the Mutt properties and not on his character as a trustee.

In Ram Prakash Das V. Ananda (x) however, the Privy Council described the status of a Mohunt in the following words :-

"The Mohunt is the head of the institution ;.... ....he manages the property of the institution, he administers its affairs and the whole assets are vested in him as the owner thereof in trust for the institution itself." What is predicated of the Mohunt here is not beneficial ownership either absolute or restricted to life time but an ownership in trust for the institution itself and although large administrative powers are vested in the reigning Mohunt, the trust does exist and ought to be respected. Though the law thus laid down is substantially correct, it requires to be stated in a modified form in view of the subsequent pronouncement of the Judicial Committee in Vidyavaruthi V. Balusami (y). The position as is now settled is that the Mohunt is neither a corporation sole nor a life tenant in respect to the Mutt properties. He is also not a trustee in the sense in which the term is understood in English law. "Call by whatever name, he is the manager or custodian of the institution and the property which he holds is not vested in him ; it is vested in the institution and is held by him as a manager on behalf of the same." The Mohunts, as the Privy Council says, have, according to usage, ample discretion in the application of the funds of the institution but always subject to certain obligations and duties equally governed by custom and usage. Though

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(x) 43 I.A. 73.
(y) 48 I.A. 302.

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not a trustee in the English sense of the term, a Mohunt is nevertheless in view of these obligations and duties, resting on him answerable as a trustee in the general sense for proper administration (z). Of course, there is nothing in law which prevents a Hindu from conveying in trust a specific property to a particular individual for a religious purpose and placing himself expressly under English law and in such circumstances the transferee, to whom legal ownership is transferred, would undoubtedly become a trustee in the proper sense of the term (a).

Is Mohuntship property?

I have told you already that sebaitship in a debutter endowment is not merely an office, it is a kind of property in Hindu law. Its devolution is governed by the ordinary rule of inheritance and to the disposition of such rights the rule in Tagore V. Tagore (b) applies. There is no judicial decision on the point as to whether Mohuntship or the office of the superior in a monastic institution is property in the eye of law. But the same reasons, it seems, for which a shebaiti right is reckoned as property would apply to the rights of a Mohunt as well. The Mohunt has at least in the majority of cases a much larger personal interest in the endowed property than what the shebait can have in the debutter estate ; he has practically an unlimited right over the surplus income and as regards the power to create derivative interests commensurate with his life time, his position is quite the same as that of a shebait. As has been pointed out already, prior to the decision in Vidya Varuthi's case (c) the Mohunt was held in many cases to be the actual owner of the endowed property which he held in trust for purposes of the endowment ; and in Arunachallam V. Venkatachelapathi (d) such rights of the plaintiff Mohunt were held to be barred under Article 144 of the Limitation Act by adverse possession of the defendants who also purported to hold the property for purposes of the institution though adversely to the plaintiff. A Mohunt is now held to be a

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(z) See in this connection Mohunt Kesodas V. Amar Dasji—14 Pat. 379.
(a) See Vidyabharuthi V. Balusami—48 I.A. 302 at p. 319.
(b) I.A. Supp. Vol. 47.
(c) 48 I.A. 302.
(d) 46 I.A. 204.

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mere manager of the endowed property like the shebait of a debutter estate, but there is no reason why Mohuntship should not be regarded as property in the same sense as the rights of a shebait are so regarded.

Succession to the office of Mohunt.

Succession to the office of Mohunt is a matter of some importance and complexity, and you would notice a marked distinction between devolution of the rights of a shebait and those of a Mohunt or superior of a Mutt. In all kinds of endowment the primary rule undoubtedly is that it is for the founder or endower to prescribe the rules according to which the succeeding managers are to be appointed. If these rules do not violate the provisions of any law, they would certainly be given effect to. On this point there is no distinction between a debutter and a Mutt. But questions would arise when the origin of an institution is unknown or the founder has not laid down any rules relating to the devolution of the rights of management. In such cases the rights of a shebait as I have already told you devolve like any other species of heritable property according to the law of inheritance. In a Mutt on the other hand it is the custom or practice of a particular institution which determines as to how a successor is to be appointed.

It was laid down by the Privy Council in the case of Greedharee Doss V. Nundo Kisore (e) as early as in the year 1867 "that the only law as to these Mohunts and their offices, functions and duties is to be found in custom and practice which is to be proved by testimony." By customs or usages are not meant any general customary law by appeal to which these questions have to be decided. They refer to the usage of the particular institution or Mutt in regard to which the question arises. As the Privy Council observed in Rajah Muttu Ramalinga V. Perianayagum Pillai (f), the constitution and the rules of religious brotherhood amongst the Hindus are by no means uniform and what the court should try to ascertain is the special laws and usages, if any, of the particular institution whose affairs have become the subject of litigation.

(e) 11 M.I.A. 405.
(f) 1 I.A. 209.

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The true basis of this rule of law was expounded by Sir Barnes Peacock in a judgment of the Calcutta High Court which was affirmed by the Privy Council in Greedharee Doss V. Nundokisore (g) referred to above. The learned Chief Justice observed as follows :

"Numerous cases have been cited to show what is the usage ; but the law to be laid down by this Court must be as to what is the usage of each Mohuntee. We apprehend that if a person endows a College or religious institution, the endower has a right to lay down the rule of succession. But when no such rule has been laid down, it must be proved by evidence what is the usage, in order to carry out the intention of the original endower. Each case must be governed by the usage of the particular Mohuntee."

This statement of law has been approved of and reiterated by the Privy Council in a large number of subsequent cases (h) ; and it may be taken to be settled law that the controlling rule with regard to the right to the office of the Mohunt would have to be found in the usage and customs of the institution provided however that there are no rules relating to the same laid down by the founder. The legal principle seems to be that the wishes of the grantor are to be primarily respected in such matters, but when there is no evidence of any direction given by the founder, the usage or practice that obtains in any particular institution is to be regarded as presumptive evidence of the grantor's intentions.

Three things you would have to bear in mind in connection with the question of succession to the office of a Mohunt. The first is that if the grantor has laid down any particular rule of succession, that is to be given effect to. Secondly in the absence of any grant the usage of the particular institution is to be followed ; and in the third place, the party who lays claim to the office of a Mohunt on the strength of any such usage must establish it affirmatively by proper legal evidence. The fact that the defendant is a trespasser would not entitle the plaintiff to succeed even

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(g) 11 M.I.A. 405.
(h) Vide Rajah Muttu Ramalinga V. P. Perianayagum Pillai—1 I.A. 209 ; Gendapuri V. Chatarpuri—13 I.A. 100 ; Lahar Puri V. Puran Nath—42 I.A. 115, 19 C.W.N. 718.

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though he be a disciple of the last Mohunt, unless he succeeds in proving the particular usage under which succession takes place in the particular institution (i).

Three classes of Mutts.

The customs relating to the appointment of Mohunts vary greatly from each other in different institutions and it is not possible to enumerate them exhaustively. Generally speaking the Mutts are divided into three classes according to the different ways in which the heads or superiors are appointed. These three descriptions of Mutts are Mourasi Panchayati and Hakimi. "In the first the office of the Mohunt is hereditary and devolves upon the chief disciple of the existing Mohunt who moreover usually nominates him as his successor ; in the second the office is elective, the presiding Mohunt being selected by an assembly of Mohunts. In the third, the appointment of the presiding Mohunt is vested in the ruling power or in the party who has endowed the temple" (j).

Mourashi Mutt.

In a Mourashi Mutt the chela or disciple of the last Mohunt succeeds to the office ; in default of chela, the office goes to the Gurubhai or co-disciple of the last holder ; when there are more chelas than one, the eldest generally succeeds, but a junior chela may succeed if he is found more capable and if he is selected by the last Mohunt as his successor (k).

In various institutions the custom is that in order to entitle a chela to succeed, he must be appointed or nominated by the reigning Mohunt during his life time or shortly before his death and this may be done either by a written declaration or some sort of testamentary document. In other cases again, the nominee is formally installed in the office and some sort of recognition is accorded to him by the members of the particular sect either during the life time of the last Mohunt or when the funeral ceremonies of the latter are performed.

In Madho Das V. Kanto Das (l), it was held on the authority of an earlier decision in Niranjan Bar-

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(i) Vide Gendapuri V. Chatarpuri—13 I.A. 100 ; Rajah Muttu Ramalinga V. Perianayagum Pillai—1 I.A. 209.
(j) Vide Mohunt Ramanuj Das V. Debraj Das—6 Mac. Sel. Rep. 262.
(k) See Achutananda Das V. Jagannath Das—20 C.W.N. 122 at page 124.
(l) 1 All. 539.

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thee V. Padarath (m) that amongst the Sanyasis generally, no chela has a right as such to succeed to the property of his deceased Guru ; his right of succession depends upon his nomination by the deceased in his life time as his successor, which nomination is generally confirmed by the Mohunts of the order when assembled together to perform the funeral obsequies of the deceased. When a Guru does not nominate his successor from among the chelas, such successor is elected and installed by the Mohunts and principal persons of the sect in the neighbourhood upon the occasion of the funeral obsequies of the deceased. The rule thus stated is not of universal application. It cannot be said as a rule of law that a chela must be nominated and without nomination cannot succeed to the office of the last Mohunt. It would appear from Colebrooke's note to the case of Ganesh Gir V. Omrao Gir (n) and Shama Charan Sarkar's Vyabhasta Chandrika (o) that there are customs in various Sannyasi sects that a Guru is succeeded in his rights and possession by his principal chela even though he has not been nominated as his successor and there has been no formal election and installation by an assembly of Mohunts. In the case of Mohunt Bhagawan Das V. Raghunandan (p), where the dispute related to succession to a Mutt in Puri known as Dakshin Phasa, it was proved by evidence that the custom obtaining in the institution was that the Mohunt had a power to select his successor from amongst his chelas but in the absence of appointment the chela succeeded as of right. If there were more than one chela the eldest succeeded and in the absence of chelas, the office went to the Gurubhai or the cochela of the last Mohunt. It was a case of a Mourashi Mutt and in a Mourashi Mutt the succession to the office of the superior goes always to the chela in the first instance and it is only when there is no chela that a Gurubhai can succeed.

A question arises here whether a Mutt can be said to be hereditary if the chela succeeds not merely

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(m) 1 S.D.A. for N.W.P. p. 512.
(n) 1 S.D.A. 291 at p. 318, 6 Ind. Dec. O.S. 214.
(o) Vol. 1, 548.
(p) 22 I.A. 94.

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by reason of his being a chela but only when he is nominated or appointed a successor by the last Mohunt ? Of course the word "Mourashi" or "hereditary" suggests the idea of transmission of the office together with the endowment by some definite rule of descent. If the succession goes to the chela or to the seniormost of them, if they are more than one, irrespective of any nomination by the last holder, the institution can certainly be said to be a Mourashi one. But is that expression applicable when the succession of the chela depends upon his being nominated or designated by a voluntary act of the Mohunt or his being accepted as a Mohunt by the members of the sect ? You will remember that the mode of succession to the office of a Mutt when it is not elective or dependent upon the authority of the ruling power is moulded on the text of Yagnavalka which provides that a virtuous disciple (सत्शिष्य) a religious brother and the preceptor are respectively the successor to the property left by an ascetic, a hermit and a life long student. As Sastri Golap Chandra has said in his work on Hindu Law, all these are different classes of Sannyasis and the distinction between them is due only to the different circumstances under which they enter the religious life. If the distinction is ignored, then the succession of Chela, Gurubhai and and a Guru resembles the succession of a virtuous pupil, religious brother and a preceptor to the properties of such persons (q). In a hereditary Mutt the succession goes in the first place according to the text of Yagnavalka to सत्शिष्य or virtuous pupil. So in order to entitle a person to succeed to the office of a Mohunt, it is not enough to show that he is a chela or disciple of the latter. He must be a सत्शिष्य or disciple endowed with good qualities. The question arises as to how it is to be determined whether a chela fulfils this requirement or not ? The way of determination must depend either upon the express directions of the founder of the endowment, if any, or upon the custom in each foundation. The custom in certain institutions may be that the seniormost chela is entitled to succeed as he is presumed to be virtuous ; or a सत्शिष्य may be only

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(q) See G. Sarkar's Hindu Law, 8th Edition, page 710.

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that chela who is nominated or appointed by the Guru during his life time, or accepted as such by the members of the fraternity after his death. In such cases also a Mutt may be called a Mourashi Mutt as the succession goes to the chela and the appointment by the Guru or recognition by the other ascetics of the order might furnish the evidence of his being a virtuous disciple. But if succession depends entirely upon election by neighbouring Mohunts it must come under the second and not the first category of Mutts described above.

Appointment of successor by Mohunt.

There are various decided authorities where the custom set up by the claimant to the office of the Mohunt was that he was the disciple of the last Mohunt and was nominated or appointed as successor by the latter, and the decision rested entirely on his being able to prove the alleged custom by proper evidence. In Gendapuri V. Chhattarpuri (r), the plaintiff claimed the office of a Mohunt on the allegation that he was the chela of the previous holder of the office and was appointed by the latter as his successor shortly before his death. The suit was dismissed as the plaintiff failed to prove that the deceased Mohunt had any power of appointment ; and it was immaterial as the Privy Council pointed out that the defendant could not prove any title in him. In Ramalingam Pillai V. Vythilingam (s) the custom set up by the plaintiff in support of the claim was that each Dharmakarta while in office and shortly before his death chose as his successor an ascetic previously initiated by him. The plaintiff proved that the ceremonies of initiation and investiture were performed but the nomination was held to be invalid for two reasons : first, it was made by a dharmakarta who had already been removed from his office by the court as he was guilty of embezzlement ; and in the second place the appointment was not made in good faith at all. A malafide appointment was thus held to be no appointment on the strength of which a chela could lay claim to the office of a Mohunt. The case of Achyutananda V.

(r) 13 I.A. 100.
(s) 20 I.A. 150.

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Jagannath Das (t) arose out of a dispute relating to succession to Mohuntship of a Mutt known as Khumbakul Mutt. The Mutt was a Mourashi Mutt and one Raghabananda, who was admittedly its Mohunt, was succeeded by his chela Sri Ram. After the death of Sri Ram, the plaintiff claimed to be his lawful successor as his Gurubhai ; the defendant resisted the claim on the allegation that he had been adopted as chela by Sri Ram. It was held on the evidence that the plaintiff was in fact the chela of Raghabananda and the defendant failed to prove that he was the chela of Sri Ram. The plaintiff's suit was hence decreed and the decree was affirmed by the High Court on appeal.

Appointment of successor by act inter vivos or will.

When the Mohunt has the right to appoint his successor, he may exercise the right by an act inter vivos or by will. In Greedharee Doss V. Nundo Kisore (u) the reigning Mohunt of a Mutt made a will appointing L, one of his disciples, to succeed him as Mohunt and to take possession of the real and personal property belonging to the Akhra with a reservation that when L should find himself incapable of fulfilling the obligations of the office, he should appoint one G who was specially designated by him in L's place as a Mohunt. L was installed as Mohunt and took possession of the Gudee and was recognised and confirmed as superior by the assembly of the Mohunts. L by his will nominated N his successor. In a suit by G against N for declaration of his reversionary right, it was held that there was no absolute gift to G, and the direction amounted at best to a precatory trust which was not enforceable in law. As this was sufficient for disposal of the case, the other question whether there was by usage any power in the Mohunt to impose such a restriction on his successor was left undecided.

That a valid appointment could be made by written declaration was held in Trimbak Puri V. Ganga Bai (v), where a Guru in Deccan nominated his own son and disciple as his successor by a

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(t) 20 C.W.N. 122.
(u) 11 M.I.A. 405.
(v) 11 Bom. 514.

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document in writing. The claim of the son was contested by the plaintiff in the suit who relied upon the fact of his also being a disciple of the Guru and his recognition by the *Dasanamas* after the death of the latter. This was held to be ineffectual as it was not proved that there was any special custom of the institution under which the claim of the successor appointed by the Guru himself could be defeated in this way.

Ordination of junior Mohunt.

In certain *Adhinams* in southern India the practice is for the Pandara Sannadhi or head of the foundation to nominate and ordinate a junior Pandara Sannadhi who acts as a co-adjutor during the life time of the senior and succeeds to him after his death. The junior Mohunt cannot be deprived of the rights which he thus acquires except for grave cause (w).

In a Mourashi Mutt it is possible for the Mohunt to make over the endowment during his life time to his chela whom he appoints as a successor. In Sita Pershad V. Thakurdas (x), a Mohunt of a Mourashi Mutt by deed of gift made over all the property of the Mutt to his senior chela and invested him with the *chadar* of Mohantee; but subsequently a dispute having arisen on account of the immoral life led by the appointee, a compromise was effected by which the former Mohunt was premitted to take the Mutt and its property, the other being allowed to retain possession of a subordinate Mutt. The Mohunt then died leaving a will by which he appointed the defendant as his successor. The original appointee thereupon obtained recognition from the neighbouring Mohunts and filed a suit against the defendant claiming possession of the Mutt and its property. It was held that the Mutt being a Mourashi Mutt the plaintiff was not entitled to possession, there being no reason why the original deed of gift should not be considered to be cancelled by the compromise and the subsequent will.

Appointment when invalid.

As has been said already the appointment of a successor by the Mohunt would not be valid if it is

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(w) Vide Tiru Vambala V. Chinna—40 Mad. 177.
(x) 5 C.L.R. 73.

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not *bona fide* (y). If the nomination is made with a ulterior purpose and not in the interests of the endowment itself, it cannot be regarded to be a proper appointment and the appointee would not acquire any rights thereby. In Nataraja V. Kailasami (z) the appellant was appointed a junior head by the Pandara Sannadhi of a Mutt who had the power to appoint a successor. The appointment was not made by him *bona fide* in the interests of the Mutt but under a compromise whereby he had avoided a threatened prosecution for forgery of a will purporting to be that of his predecessor and appointing him as successor. In these circumstances, it was held that the appointment was invalid. In Mohunt Ramprakash V. Mohunt Anandadas (a) the superior in office collusively appointed his own nephew as his successor, although he knew him to be married and consequently disqualified. The deed reserved to the grantor an annuity for his life and provided that the grantee should not appoint a successor without his sanction. The grantor gave up his office and the nephew was installed as a Mohunt. The senior chela of the Mutt thereupon filed a suit against the nephew and it was held that whether or not the senior chela could succeed as a matter of right under the custom of the Mutt, as the appointment of the defendant was invalid and there was a vacancy by reason of the original Mohunt abdicating his office, the plaintiff, who was admittedly the senior chela and even according to the defendant, the next in succession in default of appointment, was entitled to the office.

Right of appointment appertaining to the office of the Mohunt and can not be delegated.

The right of making an appointment is appurtenant to the office of the Mohunt and cannot be exercised when the Mohunt had ceased to be in office (b). The mere fact that the Mohunt is convicted of a criminal offence would not *per se* incapacitate him from exercising his right of nomination so long as he is not actually removed from office on the ground of such criminal offence (c).

(y) Vide Ramalingam V. Vythilingam—20 I.A. 150.
(z) 48 I.A. 1.
(a) 43 I.A. 73.
(b) Vide Ramalingam V. Vythilingam—20 I.A. 150.
(c) Gobinda V. Ram Charan—63 Cal. 326 at p. 348.

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A Mohunt suffering from leprosy does not lose the right of making appointment unless the disease is of a virulent type (d).

As the right of nomination is a personal right of the Mohunt, it cannot be delegated nor could it be exercised in a manner contrary to the usage of the institution. In Mohunt Ramji V. Lachhudas (e), a Mohunt of an institution known as Barahampur Paita executed an ekrarnama in favour of the Mohunt of Mirzapore giving him the right of appointing his own successor. It was held that such mode of appointment was contrary to the custom of the Ashtal and the Mohunt had no right to ignore this custom and give away the right of appointing his own successor to another person.

In many cases when a successor is appointed by Mohunt, he is installed in office with certain ceremonies. This can not be deemed to be essential, but if the appointee had not been initiated by the Mohunt and had not become his chela at all, the appointment would be of no avail if the Mohunt dies before the appointee is initiated into the sect and adopted as a chela by the Mohunt. In a Bombay case (f) the Guru of a Mutt designated the defendant as his successor but died before the defendant could be initiated. It was held by the court that the defendant could succeed as a Mohunt in the absence of the formal ceremony of initiation. It is difficult to support the view taken by the learned Judges, for the defendant did not become a chela at all of the last holder of the office and not being a chela, he could not possibly be appointed as a successor. There is nothing in the report of the case to show that there was any custom in the Mutt under which the Mohunt could appoint a person who was not his disciple. The installation of the successor in the office might be a formal ceremony but not initiation into the sect which is *sine qua non* to any claim to a religious office.

A mere *de facto* Mohunt, who has no legal title to the office, is incapable of making any appointment.

(d) Vide Bhagawan Das V. Raghunandan—22 I.A. 94.
(e) 7 C.W.N. 145.
(f) Vide Krisna Giri V. Shridhar Kavalekar—46 Bom. 655.

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Who can be appointed Mohunts?

If the Mohunt has a power of nomination under the custom of the foundation, it is necessary that his nomination must fall on one who is competent to hold the office. As the Privy Council pointed out in Ram Prakash V. Ananda (g) the person chosen may be disqualified by reason of bodily infirmity, of bodily disease such as leprosy, of disease of the mind or of the leading of a life which is immoral or is inconsistent with the vows of the brotherhood. In all such cases the nomination would be void.

Marriage by itself is not a disqualification, but the initiation of a married man must be preceded by the entire and permanent separation from his wife and by the giving up of all worldly ties. This is the rule in all ascetic foundations where the members have to take the vow of celibacy.

There are certain sects of Bairagees and of Gossains (who are called Grihastha or Gharbari Gossains) who mary and have children. In Dhancoober Bai V. Advocate General (h), we have the case of a Bairagee Mohunt who appointed his own wife as his successor in the office, and the appointment was held valid in accordance with the custom prevalent among the Sanjogee Bairagee community to which the parties belonged. It has been held that amongst the religious fraternity known as 'Dharamsala Sain Vhagat' in Lahore, a woman can be appointed a Mohunt (i).

Minority of the appointee is certainly not a disqualification. The chelas in all monastic institutions are generally adopted when they are young. If the successor is a minor when the Mohunt dies, there can be a guardian appointed to protect his interests and conduct legal transactions on his behalf.

Confirmation of appointment by fraternity of Monks.

Even where the Mohunt has the power to appoint his successor, it is the custom in various Mutts that such appointments should be confirmed or recognised by the members of the religious fraternity to which the deceased belonged. It was

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(g) 43 I.A. 73 at p. 80.
(h) 1 Bom. L.R. 743.
(i) Bishambhar Das V. Mst. Phulgari—11 Lah. 673.

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said by the Privy Council in Satnam Singh V. Bawa Bhagawan Singh (j) that in the normal case of the death of a Mohunt, the members of the fraternity to which the deceased belonged are fully aware of the vacancy in the office and the usual practice is for the installation of his successor nominated by him during his life time to take place on a certain day after his death. The gathering, where the confirmation takes place, is known by the name of 'Bhandara.' Wilson in his Glossary says that 'Bhandara' is an assembly of religious mendicants convened to celebrate the funeral obsequies of the deceased Mohunt or principal of an establishment of the order and to confirm the nomination by him of his successor. The nominee is installed in the Gudee and is invested with a saffron coloured *chadar*, which is the insignia of Mohuntship.

When the Mohunt resigns during his life time and installs his successor in the Gudee, the general practice is to give notice to the fraternity of the institution and allow them an opportunity of confirming or refusing to confirm the nomination. It was held by the Privy Council in the case mentioned above that no formal notice need be sent on such occasions and confirmation does not involve any formal election by passing of a resolution by the assembled mendicants. Ordinarily, the application of "Tilak" to the forehead of the nominee and the presents made by the members of fraternity would establish confirmation of the person installed.

When there was no appointment by the Mohunt, the mere fact that there was a 'Bhandara' after his death where a particular person, whose appointment was already cancelled, was recognised as a Mohunt would not be sufficient to confer upon him the headship of the institution (k). The position may be different where the Mutt is Panchayati and succession depends entirely upon election by a group of Mohunts who constitute, so to say, the electoral body. In a Mourashi Mutt where the succession goes to the chela appointed by the Mohunt, no election in the strict sense of the term takes place or is necessary. Only

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(j) 40 Bom. L.R. 912 ; A.I.R. (1938) P.C. 216 ; 68 C.L.J. 44.
(k) Vide Sita Pershad V. Thakordas—5 C.L.R. 73.

CENTRAL LIBRARY

the ascetics, who are connected with the institution and who assemble on the occasion of the installation of the nominee, ratify the appointment by taking part in the ceremony. It is difficult to say what the result will be if the fraternity refuses to ratify the appointment. The answer would undoubtedly have to be found in the practice or usage prevailing in the particular institution.

Punchayati or elective Mutt.

In a Punchayati Mutt the mode of appointment of the Mohunt is by election. It depends upon the custom of a particular institution as to who would be competent to exercise the power of election. Generally the Mohunts of the same sect in a particular locality or Mohunts having a common origin assemble on the 13th day after the death of the last Mohunt and proceed to elect his successor. The name given to the electoral body is *vhek* or *Punch*, the constitution of which is regulated entirely by custom. In Lahar Puri V. Puran Nath (1) the custom alleged was that the mendicants of all the ten classes (Dasnama Vhek) from Hardwar and its vicinity assemble at Hardwar on the 13th day ceremony after the death of the Mohunt and elect the Sadhak provided he is fit to do the management. A question was raised in this case as to whether the 'Dasnama Vhek' could elect a person who was not a disciple of the Mohunt and whether such practice, if proved, was not repugnant to Hindu ideas. The question was not decided by the Judicial Committee, as in their opinion the plaintiff could not prove that he was validly appointed by the 'Dasnama Vhek.' According to the findings of the High Court, which were accepted by the Privy Council, the majority of persons qualified to elect the Mohunt was in favour of the defendant, and in point of number and influence the defendant had more support than the plaintiff. The plaintiff, it was found, was elected by a fraction of Dasnama Vhek—apparently a discontented minority—who held a separate election after the defendant was elected by the majority of the Vhek. In these circumstances, it was held that the plaintiff's claim must fail. There are indeed cases which purport to lay down that none but a disciple of

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(1) 42 I.A. 115 ; 37 All 298.

CENTRAL LIBRARY

the last Mohunt could be elected by the Punch as his successor (m), but that cannot possibly be a universal rule. Preference may be given to the chelas of the deceased, but if none of them are qualified or considered to be so, the Punch can certainly elect either a Gurubhai of the late Mohunt or somebody else connected with the institution or even a chela of another Mohunt belonging to the same sect.

An interesting question arose with regard to the election of Doloi or high priest of the Hajo Temple at Kamrup in Assam in the case of Raghu Nath V. Jiban (n). Under the scheme, which was framed by the District Judge, the electors, who could elect the Doloi, included, amongst others, a certain class of persons known as Burdeories who were the descendants of the original grantees. A list of the Burdeories was prepared by a Commissioner appointed by the District Judge, but at the election not only the Burdeories, whose names appeared in the list, but even those whose names did not appear, took part at the voting. The validity of the election was challenged on this ground. The High Court held that the scheme gave the right of voting to all the Burdeories and there was nothing in it which made the right strictly dependent upon entry in the list of voters. The principle of English common law and parliamentary practice did not, it was held, apply to such cases and the election was upheld.

Hakimi Mutt.

In the third case of Mutts, which is known as Hakimi, the power of appointment is vested in the ruling power or in the family of the founder. Ever since Act XX of 1863 was passed, the ruling power in India divested itself of the right of nominating any Mohunt. The power can, however, still be exercised by families who originally endowed the institution if that is the custom which guides the Mutt.

Personal heirs as Mohunts.

There are, as indicated above, certain exceptional cases where Mutts are presided over by married persons and where the headship goes to the Mohunt's personal heir (o). These customs are generally found in Vaishnab and Bairagee Akhras in Western

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(m) Vide Brham Deo V. Ramanand—(1933) A.I.R. Pat. 70.
(n) 27 C.W.N. 312.
(o) Gossain Dawlat Gir V. Bisseswar—19 W.R. 215.

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and Southern India and also amongst Sivaite Gossain sects in Northern India.

Succession in case of subordinate Mutts.

In case of a subordinate Mutt, which is an offshoot of a parent institution, the mode of appointment of Mohunt would depend upon its own custom. If there is no fixed rule regulating relations between the two, it cannot be said that the subordinate Mutt necessarily follows the custom of the parent one (p). In Jwala Das V. Pir (q), the Mohunt of a Mutt died without appointing a successor. The plaintiff, a Mohunt of another Mutt, claimed that he had a right to appoint the successor alleging that the Mutt in dispute was a subordinate Gudee of his own. The Subordinate Judge dismissed the suit but on appeal the High Court set aside the judgment of the trial Judge and allowed the claim of the plaintiff. On a further appeal being taken to the Privy Council, the appeal was allowed and it was held that the burden lay heavily upon the plaintiff to prove his allegation and this burden he failed to discharge.

Succession to personal property of a Mohunt.

A Mohunt and for the matter of that any other Sannyasi can, as has been said above, acquire personal property of his own. If he does acquire personal property with his own money or by his own exertion, it cannot be inherited by his natural relations but passes on, after his death, to his spiritual heirs according to the text of Yagnavalka referred to above (r). The Pronamis given to a Mohunt are generally his personal property ; but here also no hard and fast rule can be laid down. The matter depends entirely upon the intention of the devotee and is regulated by custom (s). The heir of Guru's personal property is his disciple or chela and this right does not, strictly speaking, depend upon appointment or nomination. There can, however, be a custom in a Mutt, according to which the personal property of the Mohunt goes to the person who succeeds to the endowment itself. That a particular property has for generations gone to the chela of the last owner, does not warrant the presumption that it must be religious.

(p) Gossain Ramdhan V. Gossain Dalmir—14 C.W.N. 191 ; Prayad Das V. Mohunt Kriparam—8 C.L.J. 499.
(q) A.I.R. (1930) P.C. p. 245.
(r) Parmanand V. Nipal—42 C.W.N. 1013 P.C.
(s) Sri Kumudban V. Tripura—35 C.L.J. 188.

CENTRAL LIBRARY

There are observations in certain cases to the effect that as Mohunt is a person free from all worldly connections and is a celibate having no family of his own, the presumption is that what he holds or acquires is held or acquired by him on behalf of the Mutt to which his life is devoted. This presumption, it is said, will attach to all subsequent properties of a celibate Mohunt (t). The proposition as stated cannot be said to be quite accurate. The mere fact that a Mohunt is an ascetic does not raise any presumption that a property in his possession is not his personal property. Strictly speaking, there is no presumption either one way or the other and in each case the burden is upon the plaintiff to establish that the properties in respect of which he is asking for possession are properties to the possession of which he is entitled in the right in which he sues (u). If his case is that the property in suit is the personal property of the Mohunt and it has been acquired out of Pronamis or other perquisites which the Mohunt was entitled to receive for himself, or that it was acquired from the income of any trade or business carried on by the Mohunt personally, the burden is certainly upon him to prove these facts. The burden would be equally upon him if he comes to court with the allegation that it was a property belonging to the Mutt and not to the Mohunt personally. If all the discoverable sources of a property show it to be trust property, it is for the trustee to show by clear and unimpeachable evidence that it came legitimately to him as his personal property (v).

Office of Mohunt not partible.

It was observed by the Judicial Committee in Sethu Ramaswamiar V. Meruswamiar (w) that the headship of a Mutt is not a matter of partition. As has been said already, all authorities point to the supreme head of a Mutt being a single person. He is the administrator of the whole foundation and has got to perform in person certain religious duties. As Mohuntship does not devolve like shebaiti rights upon all the natural heirs, there cannot be any question of

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(t) See Sushil Chandra V. Gobinda Chandra Das—A.I.R. (1934) Pat. 431.
(u) Gobinda Ramanuj V. Mohunt Ram Charan—63 Cal. 326.
(v) Vide Srinivasa V. Evalappa—49 I.A. 237.
(w) 45 I.A. 1 at p. 9.

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having a *quasi* division of the office by creating what are known as Palas or turns of worship. It was held by a Division Bench of the Calcutta High Court in Gobinda Ramanuj V. Ram Charan (x) that according to Hindu Law neither the office of a Mohunt nor the property of a Mutt can be subject of partition. To hold otherwise would be to open the door to fraud and illegality and would result in a rapid disintegration of religious foundations and the dissipation of property settled in favour of Mutts and kindred institutions. The facts of this case were somewhat peculiar. What happened was, that in 1908 the Mohunt of a Mutt which consisted of a greater and five lesser Asthals executed a will appointing one Gobinda Ramanuj, his chief chela, to succeed him as Guddinashin Mohunt. In 1918 he executed two wills on the same day. By the first, he named the aforesaid Gobinda Ramanuj to succeed him as Mohunt of one of the lesser Asthals only and bequeathed to him certain other landed properties. By the second will, he bequeathed to another chela all the rest of the Mutt property and appointed him to succeed as Guddinashin Mohunt. The testator died shortly afterwards. There were disputes between the two chelas which were compromised by them by giving effect to the two wills of 1918. In 1920 the new Guddinashin Mohunt died having by his will appointed one Ram Charan to succeed him. Gobinda Ramanuj then sued Ram Charan to establish his title as Guddinashin Mohunt and based his claim upon the will of 1908 and also upon the fact of his being the senior chela of the late Mohunt. He attacked the two wills of 1918 as illegal and *ultra vires* as they purported to create a division of the Mutt property consisting of the various Asthals. The trial judge dismissed the suit. On appeal the High Court reversed the decision of the trial court holding that the wills of 1918 were *ultra vires*, being an attempt to divide the Asthals of the property and this the learned Judges held could not be done in law. There was an appeal taken against the judgment of the High Court to the Privy Council and the Privy Council held that the two wills of 1918

(x) 52 Cal. 748.

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should be treated as separate documents and that the defendant was entitled to be Guddinashin Mohunt under the definite appointment in the second will, and it was immaterial whether the reservation of the lesser interest to the plaintiff was valid or not. On this ground alone the judgment of the High Court was set aside and the plaintiff's suit dismissed. In regard to the question as to whether a division of the Mutt or of the office of the Mohunt was permissible in law, the Judicial Committee made the following observation (y) :—

"There is no direct authority as to the power of a Mohunt who has a number of separate asthals, which by usage have all been held by one man, to provide for their division between his successors, or to saddle the property of one or more of the component asthals with a reservation in favour of the others. All that can be safely said is that, as the essence of the law governing these maths lies in the following of custom or usage, *prima facie* such a separation would be improper, unless there were special circumstances justifying it."

Mohuntship not transferable.

A Mohunt of a Mutt cannot transfer the right of management vested in him though coupled with the obligation to manage in conformity with the trust annexed thereto. Even when one Mutt is subordinate to another in the sense that the latter has a right of nomination of the Mohunt of the former, the Mohunt of the former Mutt cannot, by deed of transfer, alienate his rights in favour of the Mohunt of the superior Mutt (z). This principle was approved of and applied by a Division Bench of the Calcutta High Court in Gobinda Ramanuj V. Mohunt Ram Charan (a). This case was a sequel to the litigation carried on in regard to the Mutt and Asthals in the district of Midnapore, out of which the case of Ram Charan V. Gobinda Ramanuj (b) referred to above arose. After the decision of the Judicial Committee, there was a fresh suit commenced by the defendant of the earlier suit on behalf of the deities of the Mutt against

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(y) See Ram Charan Ramanuj V. Gobinda Ramanuj—56 I.A. 104.
(z) See Prayad Das V. Mohunta Kriparam—8 C.L.J. 499.
(a) 63 Cal. 326.
(b) 56 I.A. 104.

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the plaintiff in the previous suit for recovery of possession of the entire Mutt with all its properties primarily on the ground that the divisions and appointments made by the previous Mohunt in his will of 1918 were invalid as amounting to a transfer and division of the Mohuntship and the Mutt properties. This contention was upheld by the Subordinate Judge and the decision was affirmed in appeal.

Mohunt cannot delegate his powers.

A Mohunt, who occupies like a shebait a fiduciary position, is incapable of delegating his rights to another person. There are of course certain exceptions to the rule which are more apparent than real, and these have been discussed already in connection with the duties of the shebait. An arrangement, which amounts merely to delegation of ministerial duties, can certainly be supported on the ground of convenience (c).

Mohunt's right to management and possession of Mutt property.

The right to management and possession of the Mutt property normally belongs to the Mohunt. The position may be different where the founder has directed otherwise ; e.g. where the endowment is created by a trust deed and the Mohunt is neither a trustee nor the sole trustee. In the case of Arunachellam V. Venkatachelapathi (d), the Privy Council pointed out the possibility of there being an usage in a Mutt different from the ordinary rule under which the spiritual head has the sole charge of the endowed property. "There may be varieties of circumstance and tenure and in respect to these the usage and custom of the Mutt fall to be determined" (e). Once that usage and custom are clear, they form the law of the Mutt.

Ordinary duties of a Mohunt in respect to the endowment.

Though the Mohunt is not a trustee in the strict sense of the word, he is, as said already, a trustee in the general sense occupying a fiduciary position in respect to the endowment and having obligations of certain kinds to discharge. He holds the Mutt property for certain religious and charitable purposes which are laid down by the founder or sanctioned by usage. These duties include the upkeep of the Mutt, the continuance of its religious rites and festivals and

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(c) Vide Ram Charan V. Gobinda—63 Cal. 326.
(d) 46 I.A. 204.
(e) Ram Prakash V. Ananda—43 I.A. 73 at 78.

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the performance of ceremonies appropriate to the particular religious order to which the institution belongs. He has to support his disciples and other persons attached to the Mutt and also entertain ascetics of the same religious order, if they come to stay in the Mutt for a short period of time. There are again charities of various types which are appurtenant to a monastic institution like *Sadavrat* or giving alms and providing food and shelter to itinerant ascetics. It has been held in a recent case (e[1]) by the Orissa High Court that although the head of a Mutt is bound to maintain his disciples and the proper maintenance of disciples is a legitimate expenditure of the Mutt property and its income, no specific right in favour of individual disciples or chelas can be recognised apart from usage. The head of the Mutt can be made answerable for not maintaining any disciple or disciples in the same way as he would be if he neglects the observance of any of his other duties relating to the management of the properties in his charge. The only remedy of the *chela* may be nothing more than the enforcement of the constructive trust, if any, on which the Mohant may be said to hold the property and not the enforecement of any individual right.

Mohunt's right to surplus income of the endowed property.

These expenses would naturally have to be met from the income of the endowed property. In addition to these, the Mohunt has got to maintain himself and the dignity of his own office in accordance with the usages of the Mutt and all these are legitimate charges upon the income of the endowed property. The question arises whether if after meeting the expenses of these defined and specific purposes of the Mutt there is still a surplus in the hands of the Mohunt what are his powers in respect to this surplus ? Is it absolutely at his disposal and can he spend it in any way he likes ? The judicial opinion on this point does not seem to be quite uniform.

In Sammanatha V. Sellappa (f), which is one of the earliest decisions where the origin and incidence of a Mutt were discussed, it was held by the Madras High Court that though the Mutt property is in

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(e[1]) Rama Mohan V. Basudev A.I.R. (1950) Orissa 28.
(f) 2 Mad. 175.

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essence a trust property and is devoted to the maintenance of the establishment, the superior has large domain over it and is not accountable for its management nor for the expenditure of the income, provided he does not apply it to any purpose other than what fairly may be regarded as furtherance of the objects of the institution. This implies that although the superior has large domain over the income and may not be bound to save anything, yet he can spend the same only over objects connected with the institution. These would include the keeping up of the dignity of his office, but not personal luxury and enjoyment of such a character as would be incongruous with his position as the spiritual head of an institution. In Vidyapurna V. Vidyanidhi (g), as I have told you already, a Mohunt was placed in the position of a corporation sole akin to a Bishop in English law. He was held to have an estate for life in the permanent endowments of the Mutt and an absolute property in the income derived from the offerings, subject only to the duty of maintaining the institution. In Kailasam Pillai V. Nataraja (h), the question referred to the Full Bench was whether the head of a Mutt holds the property as a life tenant or a trustee. According to the decision of the Full Bench, the answer would depend upon the facts of each case and the customs of a particular Mutt. Sankaran Nair, J., who was one of the Judges constituting the Full Bench, expressed the view that the expenses in connection with the maintenance of the Mutt and performance of essential ceremonies might be a charge on the income at the hands of the Mohunt, but from that it would not follow that the surplus was not at his disposal. On the other hand, there are observations in the judgment of the Judicial Committee in Arunachellam V. Venkatachelapathi (i) to the effect that if the present purposes of the Mutt do not consume the entire income, the Mohunt could not use it for his personal use apart from the dignity of his office. That according to their Lordships would be not only subversive of the usage

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(g) 27 Mad. 435.
(h) 33 Mad. 205 F.B.
(i) 46 I.A. 204.

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and custom of the Mutt but would be a violation of the law applicable to such institution. The rule to apply to such cases would be the ordinary rule according to which the surplus is to be added to the estate in the usual course of administration.

As I have told you already, the pronouncements of the Judicial Committee have made it perfectly clear that a Mohunt is neither a life tenant nor a corporation sole. He is only in charge of the management of the Mutt, though he may have by usage a personal interest to a large extent in the usufruct of the Mutt properties. It would not be correct to say that subject to meeting the expenses which are necessary for carrying on the normal activities of the Mutt, the Mohunt is the absolute owner of the income and he can do whatever he likes with it. That he is not the owner of the surplus income or any savings from the same is clearly established by the fact that after his death these savings are not regarded as his personal property and cannot be proceeded against for satisfaction of his personal debts (j). They become part of the Mutt property and devolve as such on his successor. It cannot be disputed, however, that the Mohunt has a wide discretion in the matter of dealing with the surplus. He is not bound to save the surplus or invest it in a particular way, unless he is obliged to do so under the terms of any scheme framed by a court. He cannot spend it, it seems, on his personal use unconnected with the dignity of his office, and it is expected that he should employ the funds in furthering the general objects of the institution, viz., objects of religious charity and promotion of religious learning. Of course he has a discretion in such matters also and he can choose one or more of these purposes and spend as much as he likes upon it. The whole thing, as I have told you already, depends upon the presumed intentions of the grantor and a Hindu granting or entrusting to a pious man property as an endowment for religious and charitable purposes cannot be presumed to give him a general power of appointing the income or the surplus income of the endowed property to any object he pleases (k). In the

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(j) Appa Rao V. Vignesam—A.I.R. (1937) Mad. 118.
(k) Vide G. Sarkar's Hindu Law, 8th Edn. p. 681.

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absence of any written document, the intention of the founder is to be sought for in the usages that have grown up in a particular institution. The Mohunt would be certainly accountable if he uses the surplus funds for purposes alien to those for which the institution is founded. If the objects on which the money is spent relate to charity, religious learning and other allied maters for which the institution exists, nobody can call him to account as to why he did not employ the funds for making additions to the endowment or why he chose one particular object and not another. The Privy Council in Vidya Bharuthi V. Balusami (l) put the whole law in a nutshell, when they said that these superiors "have ample discretion in the application of the funds of the Mutts, but always subject to certain obligations and duties equally governed by custom or usage." The position would be different where there is a scheme framed by a court and in such cases he would have to abide by its terms scrupulously. If the surplus income is saved, it would certainly be a part of the corpus of the endowment and would pass on to the successor along with the office.

Mohunt's right of suing and being sued.

The Mohunt is the spiritual head of the Mutt as well as the administrator of its temporal affairs. It is he who represents the Mutt in its dealings with the outside world, and necessarily the Mohunt has the power to do everything that is required in the interests or for the benefit of the endowment. The Mohunt is the proper person to institute or defend suits on behalf of the Mutt. As I have said already, the view can no longer be maintained that the Mohunt is a life tenant or a corporation sole or an owner who holds the Mutt property in trust. The ownership resides in the Mutt itself as a juridical person and this juridical entity acquires, holds and vindicates its legal rights through Mohunt or superior as a human agent. As Sir Lawrence Jenkins observed in Babaji Rao V. Laxman Das (m), "when the property is vested in the Mutt, then litigation in respect of it has ordinarily to be conducted by, and in the name of the manager, not because the legal property is in the manager, but

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(1) 48 I.A. 302.
(m) 28 Bom. 215 at p. 223.

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because it is the established practice that the suit would be brought in that form." Unless by usage or express directions of the founder the right to possession of the Mutt property is vested elsewhere, the right to sue or to be sued must be deemed to reside in the Mohunt.

In connection with suits instituted by a Mohunt, the distinction between a litigation to enforce his personal rights and that in which he seeks to vindicate and establish the rights of the Mutt should be clearly borne in mind. Important legal consequences flow from this distinction as was pointed out in the case of Babaji Rao V. Laxman Das (m) referred to above. The defendant, who was the appellant in this case, took the house, which was the subject matter of the litigation from one Raghunath Das, the Mohunt of a Mutt. After the death of Raghunath Das, his disciple, the present plaintiff, brought a possessory suit in the Mamlatdar's court against the defendant and the Mamlatdar dismissed the suit on 6th of May 1889 on the simple ground that without producing a succession certificate the plaintiff was not able to establish his title as successor to Raghunath Das. Subsequently, the plaintiff brought the present suit as manager of the Mutt on 7th of February 1900. The defence primarily was that the suit was barred by limitation under Article 47 Schedule II of the Limitation Act inasmuch as it was not brought within 3 years from the date of the order made by the Mamlatdar in the possessory suit. It was held that the suit was not time barred, because the first suit in the Mamlatdar's court was brought by the plaintiff in his personal capacity as heir to Raghunath Das, who was alleged to be the proprietor of the house, while the second suit was brought by him as manager and on behalf of the Mutt. Sir Lawrence Jenkins in course of his judgment observed as follows :

"Now in connection with the property of a Math, we have two distinct classes of suits ; those in which the manager seeks to enforce his private and personal rights, and those in which he seeks to vindicate the rights of the Math. These two classes of suits are illustrated by Gnanasambanda Pandara V. Velu Pan-

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daram (n), on the one hand, and Dattagiri V. Dattatraya (o) on the other ; and the rights of the Math cannot ordinarily be prejudiced by the result of a suit of the former class, that is to say, by one in which the private and personal rights of the manager alone are in question."

It was pointed out that a suit on behalf of the Mutt has undoubtedly to be instituted in the name of the Mohunt, but the person in whose name the suit is thus brought has in relation to the suit a distinct capacity of its own ; he is therein a stranger to himself in his personal and private capacity. The material question, therefore, for consideration in such cases would be as to whether what was litigated in the previous suit was the rights of the Mutt as such or the personal rights of the Mohunt.

You would remember that in the case of Jagadindra Nath Roy V. Rani Hemanta Kumari Debi (p), it was held by the Privy Council that the right to sue in respect of a debutter property was vested in the shebait and if the shebait was a minor when the cause of action for the suit accrued, he was entitled to the benefit of section 7 of the Limitation Act. The right to sue in respect of a Mutt must necessarily be vested in the Mohunt by reason of his being entitled to possession and management of the dedicated property. Clearly therefore no person other than the Mohunt would be entitled to institute or defend a suit on behalf of the Mutt. The reasons which underlie the decision of the Privy Council in Jagadindra's case apply equally, if not with greater force, to a Mohunt, and he would certainly be entitled to the privilege of minority if he happened to be a minor when the right to sue arose.

De facto Mohunt can sue

It has been held by the Privy Council in a number of cases that a *de facto* Mohunt, who is in actual possession of a Mutt and is exercising all its functions, though he has no legal title to it, is competent to institute a suit to recover possession of a property held by a stranger adversely to the Mutt, though not for his own benefit but for the benefit of

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(n) (1899) 27 I.A. 69.
(o) (1902) 27 Bom. 363 ; 4 Bom. L.R. 743.
(p) 31 I.A. 203.

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the Mutt itself (q). This power is recognised in the interests of the trust property, for if the endowed property is without any legal guardian owing to a defect in the machinery for appointment of a guardian or owing to unwillingness on the part of the legal trustee to act, it is only reasonable that somebody in charge of the institution and actually controlling its affairs should be given authority, in the absence of any person with a better title, to take steps for the protection of the trust property (r).

Suit by persons interested in the Mutt.

When the Mohunt is himself guilty of misappropriating the property of the endowment or has alienated any portion of it to a stranger without any legal necessity and is himself unwilling or unable to act, any other person can file a suit against the alienee or the wrong doer. Article 134 A of the Limitation Act contemplates a suit to set aside a transfer of immovable property comprised in a Hindu religious endowment made by manager for valuable consideration, at the instance of persons interested in such endowment. In such cases, it seems, that the plaintiff cannot claim to recover possession but he may sue to have the transfer set aside and for any other consequential relief which may be adapted to the circumstances of a particular case.

Judgment against a Mohunt binds its successor.

A judgment against a Mohunt properly obtained would be binding on his successor and the Mutt itself on the principle enunciated by the Judicial Committee in the case of Prosanna V. Gulab (s). In this case the appellants as shebaits in succession to the judgment debtor sued to set aside the decrees and to have the debutter property released from attachment on the ground that the debts were not incurred for legal necessity. It was held that the decrees being untainted by fraud or collusion and having been passed after necessary and proper issues had been raised and determined, are entitled to the force due to the judgments of competent courts and are binding on succeeding shebaits who form a continuing representation of the idol's property. This was the case of a shebait,

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(q) Vide Ram Charan Das V. Naurangi Lal—60 I.A. 124 ; Mahadeo Prasad V. Karia Bharat—62 I.A. 47.
(r) Vide Subramaniya V. Abbinava—A.I.R. (1940) Mad. 617.
(s) 2 I.A. 145.

CENTRAL LIBRARY

but the same principle would apply to a Mohunt. One Mohunt strictly speaking does not claim from his predecessor, yet as the superior for the time being represents the Mutt completely, a decision against him binds his successors by reason of the jural relation between the office and the property (t).

When a decree is passed against a Mohunt as representing a Mutt, his successor cannot dispute its validity by raising objections in execution proceedings. His proper remedy is by way of a suit. This rule applies even if the Mohunt, against whom the decree was obtained, was only a *de facto* Mohunt, whose title was negatived by a court of law. In Sudhindra V. Budan (u), B obtained a decree on a settlement of accounts made with 'V' as trustee of a Mutt. V's title as trustee of the Mutt was negatived by a decree of court and the title of S was declared. B executed the decree and prayed for substitution of S as a party to the execution proceedings. S was made a party and he raised objections under section 47 Civil Procedure Code contending *inter alia* that the debt not being contracted for the benefit of the Mutt, the decree was not binding on him. It was held by the High Court that this question, which affected the validity and in fact the very substance of the decree, could not be raised in execution proceedings. This decision was followed and approved of in a later case decided by the Madras High Court which is to be found reported in Manikka Vasaka V. Balagopala Krishna (v).

Decree on compromise.

The fact that the decree was based on a compromise does not make any difference, provided the compromise was a fair and *bona fide* one which the Mohunt entered into in the interests of the Mutt (w). If, however, by compromise the Mohunt agreed to alienate Mutt property without any legal necessity, such compromise is illegal and should not be recorded by the court (x). In Mohunt Ramdhan Puri V. Msst. Parbati Kuer (y) one Mahabir Puri, the Mohunt of

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(t) See Gora Chand V. Makhan Lal—6 C.L.J. 404 at 408.
(u) 9 Mad. 80.
(v) 29 Mad. 553.
(w) Manikka Vasaka V. Balagopala Krishna—29 Mad. 553.
(x) Anandi Lal V. Jagarnath—9 Pat. Law Times 214.
(y) 16 Pat. 476.

CENTRAL LIBRARY

a Mutt named Islampur, executed a permanent mokarari lease in respect to one of the Mutt properties for a premium of Rs. 12,000 and an annual rent of Rs. 5/-. The osetnsible object of granting the lease was to pay certain debts contracted by the Mohunt himself and his predecessor. Sometime afterwards Mahabir Puri abdicated and was succeeded by Mohunt Bednarain Puri. Bednarain instituted a suit for cancellation of the lease and for recovery of possession of the property. The suit ended in a compromise, under which the plaintiff got back half of the property and the other half was left in possession of the lessees. After Bednarain retired from his office, Ramdhan Puri succeeded. He demanded back possession of the 8 annas' share in the property that was still with the lessees and one of the lessees who held a 2 annas' share gave up possession ; for the remaining 6 annas' share, Ramdhan instituted a suit. The court below held that there was no legal necessity which would support the transfer but the compromise entered into by Bednarain, the predecessor of the plaintiff, was binding on him and on this ground the suit was dismissed. On appeal the High Court set aside the judgment and decreed the suit holding that the compromise itself being illegal and contrary to law, was not binding on the Mutt and the plaintiff was consequently entitled to recovery of possession of the property.

When, however, the decree is against the Mohunt personally the Mutt properties either in his hands or at the hands of his successor could not be attached or sold in execution of that decree.

Mohunt's power to borrow money.

A Mohunt like the shebait of a deity is competent to borrow money for purposes connected with the Mutt, and he can do so by way of mortgage of any of the endowed properties or on a purely personal contract. As a mortgage amounts to alienation of property, it comes under a somewhat different category. So far as simple contract debts are concerned, there are a number of authorities which have held that if there is a justifying necessity for incurring the debt or if the creditor did make *bona fide* enquiries and satisfy himself that such necessity existed, a decree may be given making the amount recoverable from the Mutt property although no charge was

CENTRAL LIBRARY

created in respect of the same ; and it is immaterial in such cases whether the suit to recover the money was brought during the life time of the Mohunt who contracted the debt or against the successor (z). The point that is made against this view is that in a suit to recover simple money debts, the decree should be made only against the promissor personally. The fact that the money was utilised or was intended to be utilised for the benefit of a Mutt cannot entitle a plaintiff to have a decree charging the amount due under the promissory note upon the endowed property. It is said that in case of an executor or administrator the general rule adopted by English courts is that he can sell or mortgage property in course of administration of the estate but if he borrows money for purposes of administration, he makes himself only personally liable and the creditor cannot proceed directly against the estate. The creditor can have only a personal decree against the executor, though if the debt was incurred for purposes of administration the judgment debtor has a right of indemnity against the assets in his hands (a). Exactly similar is the position of the manager of a charitable institution incurring liability for purpose of the institution (b). In Shankar Bharati V. Venkappa (c), it was held that the principle of these decisions was inapplicable to the case of the Swami of a Mutt who personally has no private property and must, therefore, be presumed to be pledging the credit of the Mutt when he borrows money for purposes of the Mutt. This reasoning was approved of by Sadasiva Ayyar, J. in Lakshmindra Tirtha V. Raghavendra (d). Spencer, J., who was the other Judge of the Bench, based his decision on the larger ground that in case the head of a Mutt contracts debts for purposes of the institution, the presumption is that he does not intend to make himself personally liable. It seems that Sadasiva Ayyar, J. went a bit too far when he said that a Hindu sannya-

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(z) Vide Lakshmindra Tirtha Swamiar V. K. Raghavendra Rao—43 Mad. 795 ; Shankar V. Venkappa—9 Bom. 422 ; Srinath Daibasika Moni V. Noor Mohammad—31 Mad. 47.
(a) See Farhall V. Farhall—7 Ch.A. 123.
(b) See Strickland V. Symons—(1884) 26 Ch.D. 245.
(c) 9 Bom. 422.
(d) 43 Mad. 795.

CENTRAL LIBRARY

si has no personal credit whatever of a monetary or proprietory character and that it is a contradiction in terms to state that any loan was made to a sannyasi on his personal credit (e). As I have said already, there is nothing unusual in a Hindu sannyasi earning money or property for his own benefit. In many cases the *pronamis* which he receives from the devotees and disciples become his personal properties ; and examples are not rare when he carries on money-lending or other businesses on his own account. I think, however, that the view that where a loan contracted by a Mohunt is supported by legal necessity a decree can be made binding on the trust property, may be justified on another principle. Assuming that in a simple contract debt the Mohunt is to be deemed to pledge only his personal credit, but if the money borrowed was necessary for purposes of the Mutt, he would have the right to have this money paid out of the Mutt property. The creditor in such circumstances can invoke the equitable doctrine of subrogation and claim to be placed in the position of the Mohunt for enforcement of the latter's right against the Mutt property. As the Mohunt himself represents the Mutt, the rights of the party can conveniently be worked out in one and the same suit.

Form of decree to be passed in a creditor's suit.

If the creditor succeeds in establishing that there was a justifying necessity for the loan, he is entitled, as said above, to have a decree against the Mohunt as representing the Mutt and the decree could be executed like an ordinary money decree by attachment and sale of any of the endowed properties. When the plaintiff fails to prove legal necessity, the decree would be against the Mohunt personally which means that the Mohunt's personal property, if any, could be proceeded against in execution. In the case of Niladri Sahoo V. Mohunt Chaturbhuj (f), the suit was one to enforce a mortgage executed by a Mohunt to discharge certain previous loans. It was held by the Judicial Committee that the mortgage was for necessity so as to be within the powers of the Mohunt ; but nevertheless the decree passed in this case was not a

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(e) Vide 43 Mad. 795 at p. 799.
(f) 53 I.A. 253.

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mortgage decree at all but a personal decree against the Mohunt directing him to pay the mortgage money personally. Upon failure to pay the money, the direction given was that a Receiver should be appointed to realise rents and profits of the endowed property, and after payment of all necessary expenses the beneficial interest of the Mohunt in the usufruct, subject to an allowance for his maintenance, should be credited towards the payment of the plaintiff's dues. I have already told you that this cannot be the usual or proper form of decree to be passed in all cases where the Mohunt is proved to have contracted debt either secured or unsecured to meet the necessities of the Mutt (g). Such decree may prove to be wholly illusory where decretal amount is large and the Mohunt's personal interest in the endowment is not sufficient to wipe off the decretal dues within any appreciable period. It may be quite appropriate as a form of decree or a mode of execution where the decree is against the Mohunt personally and the judgment debtor has no other property except his emoluments or personal interest in the usufruct of the endowment.

When the loan is supported by legal necessity, then, whether the debt is a secured or unsecured debt, a proper form of decree would be as was passed in the case of Vibhudapriya V. Lakshmindra (h). This was a case of an unsecured debt and the decree directed the guardian of the infant Mohunt to pay money with interest at a certain rate within 3 months, failing which a Receiver was to be appointed to collect the rents and profits of the entire Mutt property, and after payment of all expenses connected with the Mutt and a reasonable provision for maintenance of the superior, the balance was to be applied to the discharge of the plaintiff's debts. An endeavour must, in all cases, be made to protect, if possible, the corpus of the endowed property and only when that is not possible, the usual decree would have to be passed.

Mohunt's power of alienation.

The powers of alienation of a Mohunt in respect of the property of the Mutt are identically the same as are possessed by shebait in regard to the debutter

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(g) Vide Mahabir Das V. Jamna—8 Pat. 48.
(h) 54 I.A. 228.

UNIVERSITY OF CALCUTTA ADVANCEMENT OF LEARNING CENTRAL LIBRARY

property. As has been laid down by the Judicial Committee in Vidya Varuthi V. Balusami (i), a Mohunt is in no sense a trustee as is understood in English law ; he is only a manager or custodian of Mutt property which itself is a juristic person vested with the capacity of receiving gifts and holding property. As the property is not vested in the Mohunt, his right to create an interest in the Mutt property beyond his life time or rather his tenure of office is limited only to cases where it is warranted by justifiable necessity or benefit to the institution. The powers are analogous to those of an infant heir as has been enunciated by the Privy Council in the case of Hunooman Persad Panday (j). I have dealt with this subject already in great details while dealing with the rights and powers of a shebait and in fact many of the authorities referred to in that connection are cases relating to transfer of Mutt properties. As the shebait and the Mohunt occupy exactly the same position with regard to the alienation of endowed properties, it would not be necessary to repeat what has been said already in the previous chapter. I will recapitulate only a few matters which have special reference to the conditions of a Mutt, only for the purpose of completing our discussion on this branch of the law.

Legal necessity —what it means ?

What constitutes necessity or benefit to the Mutt must undoubtedly depend upon the circumstances of each case, and it is not possible to formulate any rigid or exhaustive definition. Apart from necessities of a general character like preservation of property from extinction, defence against hostile litigation affecting it, the protection of it or portions of it from injury or deterioration by flood, inundation etc., or preventing it from being sold for non-payment of Government revenue or in execution of a decree lawfully obtained, which may arise both in a debutter as well as in a Mutt, there may be special necessities peculiar to a Mutt by reason of usage or customs prevalent therein. In Niladri Sahu V. Mohunt Chaturbhuj (k), the original loan for which the Mutt

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(i) 43 I.A. 302.
(j) 6 M.I.A. 393.
(k) 53 I.A. 253.

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property was mortgaged by the Mohunt was incurred mainly for the purpose of constructing pucca buildings for the accommodation of wealthy devotees visiting the Mutt. Though not unavoidably necessary, such purpose was held to be for the benefit of the Mutt justifying the creation of a mortgage. Similarly in Vibhuda Priya V. Lakhimdra (l), the head of a Mutt had borrowed money towards the expenses of a periodic festival which by ancient usage included the feeding of all Brahmin pilgrims connected with the Mutt and for rebuilding the dining hall. Feeding of Brahmins on a particular scale could not ordinarily be regarded as an indispensable necessity and the Madras High Court refused to make the decree binding on the Mutt. Krishnan, J. in his judgment remarked, "There are no doubt certain Pujas and ceremonies which have necessarily to be performed and any reasonable expenditure incurred for carrying them out will be binding on the Mutt but there is no obligation to have the ceremonies performed on the scale that the Sirur Swami did." But this view was not accepted by the Judicial Committee and Mr. Ameer Ali in his judgment observed as follows :

"These Matadhipathis have a difficult task to perform; unaided by any established rule they are expected to exercise control over the numbers of pilgrims, who come to the temple in order to participate in the festivals and share in the food offerings. Even if it were permissible for the superior to exclude a certain number being fed, their Lordships doubt whether popular sentiment would sanction his so doing. The obligations under which they labour are regulated by custom which are of long standing and have been observed for centuries."

Thus circumstances which may not be construed as absolute necessity in the ordinary sense of the expression may justify the contraction of a debt or alienation of property by the superior of a Mutt if according to the usages of the Mutt and the sentiments of those who are associated with the institution it is deemed to be obligatory. It has been held and quite rightly by the Patna High Court in Sri Thakurji V.

(l) 54 I.A. 228.

UNIVERSITY OF CALCUTTA ADVANCEMENT OF LEARNING CENTRAL LIBRARY

Mathura Prasad (m) that to an institution, like a Mutt, preservation of its prestige and influence is no less necessary than preservation of property. Thus where an elephant is necessary for use during festival occasions the Mohunt can purchase one even by borrowing money provided he acts prudently. The matter should be approached not from an absolute standard of necessity but from the point of view of what consideration would weigh in the mind of a prudent manager. The necessity justifying alienation of Mutt property must always be judged with reference to the special requirements of the endowment which are either laid down by the grantor or demanded by the usages of the institution. The question of necessity cannot be decided upon the analogy of other institutions.

Benefit to the Mutt.

I have already told you in the previous lecture that the expression "benefit to the state" is not confined absolutely to cases where the act done is purely of a defensive character undertaken for the protection of the state already in possession. Benefit to the estate certainly does not include profitable investment. A Mohunt is not entitled to sell a portion of the property and apply its sale proceeds in money lending or other businesses which might yield a far greater profit than he could hope to obtain from the property itself. As the Judicial Committee observed in Palaniappa Chetty V. Deivasikamony (n), "attractive and lucrative as money lending may be in India, it is needless to point out that a shebait would not be justified in selling debutter land solely for the purpose of getting capital to embark in the money lending business. And no authority has been cited giving any countenance to the notion that a shebait is entitled to sell debutter lands solely for the purpose of so investing the price of it as to bring in an income larger than that derived from the probably safer and certainly more stable property, the debutter land itself." But when a piece of useless property which brings absolutely no income to the endowment is sold for a reasonable price and the sale proceeds are invested in the

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(m) (1941) A.I.R. Pat. 354.
(n) 44 I.A. 147 at p. 156.

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purchase of a better property, the act of the manager can be justified as a prudent act of management for the benefit of the state (o).

You should bear in mind in this connection that in deciding whether there is necessity or not for any particular transaction, the immediate and not the remote cause of the alienation is to be considered. In the case of Niladri Sahu V. Mohunt Chaturbhuj (p), where the Mohunt mortgaged certain endowed properties to secure loan at 1% per mensem in order to discharge loans at 2% per mensem which were an accumulating burden upon the endowment, the transaction was held to be justified irrespective of the fact as to whether the original loans were properly contracted or not.

Lease by a Mohunt.

A Mohunt is entitled to grant lease of Mutt lands in the ordinary course of management and can create derivative tenure conformable to usage (q). What he cannot do, without justifying necessity, is to grant a lease in perpetuity at a fixed and unalterable rent which deprives the endowment of the benefit of a variable rent from time to time (r). In Balaswami V. Venkataswami (s), the Mathadhipathi of Sri Vyasarya Mutt granted a permanent lease of certain Mutt lands to the second plaintiff at a fixed rental of Rs. 24 per annum. In 1902 the second plaintiff sublet the lands to the first defendant and in 1905 he and his son the third plaintiff sold their interest to the first plaintiff. The grantor died soon after the lease was executed and his successor, who remained in office till 1906, did not raise any objection to the validity of the lease. In 1908, however, the first witness of the defendant who became the manager of the institution under an appointment by the Dewan of Mysore, to whom a power of attorney was given by the Mathadhipathis objected to the lease and asked the defendant No. 1 to attorn to him. Defendant No. 1 refused at first but later on he along with defendant No. 2 took a lease from the manager for

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(o) Vide Vaidyanath V. Kunja Kumar—A.I.R. (1949) Pat. 75.
(p) 53 I.A. 253.
(q) See Mohunt Joy Krishna V. Bhuklal—6 Pat. L.J. 638.
(r) See Palaniappa Chetty V. Deivasikamony—44 I.A. 147.
(s) 40 Mad. 745.

CENTRAL LIBRARY

a period of 17 years. The plaintiff then filed a suit for a declaration of his right as a permanent lessee of the land. The suit was dismissed and it was held by the High Court that as there was no proof of legal necessity, the lease was not binding upon the successor to the original Mohunt.

A permanent lease of Mutt property granted by a Mohunt is not void altogether. It is operative at least during the tenure of office of the grantor. Accordingly, if the succeeding Mohunt accepts rent from a person who had obtained a lease from his predecessor, such receipt of rent would be referable to a new tenancy, and the possession of the lessee would not be adverse until the office of such new manager terminates (t). But when after a succession of managers have kept on the lease by acceptance of rents, a new manager comes to the office and his dealings are such as to suggest that he accepted rent as payable not in respect of a new tenancy created by him but as payable in respect of a permanent right which it was no longer in the power of the Mutt authorities to repudiate, the possession under the lease must be deemed to be adverse and after 12 years of such possession have elapsed, it would no longer be open to the manager to eject the lessee (u).

A permanent lease not void but valid during the life time or tenure of office of the grantor.

The same principle applies to sale. When instead of a permanent lease there is an out and out sale of a Mutt property, the purchaser will get a title commensurate with the term of office of the vendor, and his possession would be adverse after the vendor dies or is removed or retires from office. In Mohunt Ram Charan V. Naurangilal (v), one Rampat Das, the Mohunt of a Mutt, executed a mokarari lease to respondent No. 1 in 1909 of certain property belonging to the Mutt and put him in possession. Two years later the same Mohunt executed a sale deed in respect to the same property in favour of respondent No. 3, the wife of respondent No. 2. Rampat Das died and the appellant, who succeeded the Mohunt to the office, instituted a suit in May 1924 against the respondent

Sales also are valid during the time of office of vendor.

(t) Vide Vidya Varuthi V. Balusami—43 I.A. 302.
(u) Vide Ponnambala Desikar V. Periyannam—63 I.A. 261 ; 40 C.W.N. 901.
(v) 60 I.A. 124.

CENTRAL LIBRARY

for recovery of possession of the property. The High Court held the suit to be time barred as the sale took place more than 12 years prior to the institution of the suit. The Privy Council reversed the decision and held that the sale was operative at least so long as the vendor lived and the possession of the purchaser became adverse only when he died. "A Mohunt has powers" so runs the judgment, "apart from any question of necessity to create an interest in property appertaining to the Mutt which will continue during his own life, or to put it perhaps more accurately, which will continue during the tenure of office of Mohunt of the Mutt with the result that adverse possession of the particular property will only commence when the Mohunt, who had disposed of it, ceases to be Mohunt by death or otherwise." The office of the alienating Mohunt might cease not only as a result of death or retirement or relinquishment, it may cease also, if *qua* Mohunt there is complete loss of his status by reason of the loss or extinction of his rights in the Mutt property. It has been held by the Patna High Court in Ramlagan V. Nandipat (w) that when a Mohunt after transferring one item of Mutt property transferred the entire balance to another person, the possession of the first alienee would be adverse not from the date of death of the Mohunt but from the date of the second alienation, as such alienation would have the effect of a civil death completely extinguishing the status of the Mohunt.

Thus so far as the legal consequences flowing from an alienation are concerned, there is no difference between a permanent lease or complete alienation of endowed property and in this respect the position of the head of a Mutt, the shebait of a family idol or the Dharmakarta of a temple is identically the same (x). The sale, however, would be void altogether and the purchaser would not acquire any title if the transfer is of the entire endowment and not of particular items of endowed property. In Gnana Sambandha V. Velu (y), the hereditary trustee

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(w) A.I.R. (1938) Pat 143.
(x) See Srinath Daivasikuamani V. Periyanan Chetti—63 I.A. 261.
(y) 27 I.A. 69; see also Biseswar Das V. Sashi—A.I.R. (1943) Pat. 289.

CENTRAL LIBRARY

of a religious endowment sold the hereditary right of management and transferred the entire endowment to another person and it was held that the sales were void altogether and the purchaser did not acquire any interest even so long as the vendor lived.

Limitation in suits for recovery of Mutt property improperly alienated.

As regards the rule of limitation which is to be applied to suits for recovery of possession of Mutt property improperly alienated, the whole law has been discussed in the previous chapter and there is little further which can be added here usefully. Except those cases which are governed by Articles 134A to 134C which came to the Indian Limitation Act in the year 1929, Article 144 of the Limitation Act is the article which governs suits of this description and the starting point of limitation is the time when the possession of the alienee becomes adverse to the endowment. As has been said above, ordinarily the possession of the transferee is not adverse so long as the transferor is in office. Exceptions to the rule occur where the entire endowment is transferred as in Gnana Sambandha's case referred to above. The same consequences would follow and the possession of the purchaser would be adverse from the date of purchase if the Mohunt purports to transfer the property as his own personal property and not the property of the Mutt. In the case of an involuntary sale in execution of a money decree I have already said in the previous chapter that the possession of the purchaser becomes adverse from the very beginning if he has purchased the debutter property in execution of a money decree against a Mohunt personally. In the case of a mortgage sale however time would run not from the date of sale but from the date when the Mohunt ceases to be in office by death or otherwise (z). You should also bear in mind that Article 134B has no application to the case of an execution sale.

Onus of proof.

As in the case of debutter estate, when a Mutt property is alienated by the Mohunt either by way of mortgage or sale, the onus is always on the alienee to prove that there was a legal necessity justifying the transfer or that he made enquiries and satisfied him-

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(z) Sri Thakurji V. Mathura—A.I.R. (1941) Pat. 354.

CENTRAL LIBRARY

self that there was actual pressure upon the estate which could not be otherwise met. When however the alienation has been treated as binding by successive holders of the office and a long time had elapsed since the date of the transaction, the court would be more easily satisfied with evidence than in cases where the transaction was recent and had been disputed shortly after it took place. The case of Murugesam Pillai V. Manickavasaka (a) is one of the leading authorities on this point. In this case the plaintiff appellant sued to enforce a hypothecation bond executed by the Pandara of a Mutt in respect to a Mutt property. The defence was that the debt was not incurred for legal necessity. The trial judge found upon the evidence and from failure on the part of the defendant to produce the books of the Mutt that the debt was incurred to meet the expenses of a litigation in 1881 and had been recognised as a debt binding upon the institution. As the litigation was for asserting and vindicating the rights of the Mutt, the expenses constituted a necessity which justified the incurring of the debt. On appeal to the High Court the judgment of the Subordinate Judge was set aside and the learned Judges held upon an examination of the evidence that the surplus income of the Mutt was sufficient for purposes of the litigation. There was a further appeal to the Privy Council and the Judicial Committee allowed the appeal and restored the judgment of the trial Judge. In course of the judgment Lord Shaw observed as follows :—

"The Board does not wish to cast any doubt upon the proposition that, in the case of mortgages granted over the security of an adhinam or math by the head thereof, it lies upon the mortgagee, or those in his right, to prove that the debt was a necessary expense of the institution itself. But it is a circumstance of great weight when holder after holder of the headship recognises and deals with the debt on that basis ; and as time goes on this may itself come to be a not unimportant element of probation upon the issue. It must also be fully borne in mind that with the lapse of time the parties to the transaction may

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(a) 44 I.A. 98.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
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die or disappear. In the present case Pillai, the lender, is dead ; Manickavasaka, the borrower, is also dead ; and it is conceivable that, as years elapse, in such cases nearly all the material evidence may in the course of years disappear while the debt itself still remains, having from its initiation till almost the date of suit been recognised by all concerned as a debt truly constituted by the adhinam. In such cases a Court is much more easily satisfied that the debt was properly incurred than where the transaction was itself recent, and can therefore be the subject of more exact evidence, or where the transaction, although remote, has been the subject of challenge or dispute by those charged with the interests of the institution."

When a transfer is challenged after a long period of time and it is not possible to ascertain the circumstances under which it was made, a presumption can lawfully be drawn that it was made for legal necessity (b).

Mohunt's liability to account.

A Mohunt of a Mutt has larger discretion regarding expenditure of the income of the Mutt properties than the shebait of a debutter estate. Subject to certain obligations and duties governed by custom and usages, his discretion is almost unfettered and unless there is absence of good faith, the discretion of the Mohunt could not be interfered with or reviewed by the court. As a trustee in the general sense, a Mohunt can certainly be made accountable for maladministration and as a person occupying a fiduciary position it is his duty to keep regular accounts (c). The failure to keep accounts may itself be a ground for removal (d). Under section 10 of the Limitation Act as amended by Act I of 1929, the liability to render accounts shall not be barred by limitation.

The way of taking accounts when a Mohunt is removed for misconduct will be discussed later on when we come to deal with suits or legal proceedings in connexion with removal of Mohunt.

Termination of the office of Mohunt.

The office of the Mohunt must necessarily cease on the death of the Mohunt and the question of suc-

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(b) See Bawa Mangiram V. Kasturabai—49 I.A. 54.
(c) See Thackersey V. Harbhum—8 Bom. 432.
(d) See Manohar V. Lakhmiram—12 Bom. 247.

CENTRAL LIBRARY

cession to the office would depend upon the usages of the Mutt.

Renunciation of office.

It is always possible for the Mohunt to relinquish his office before his death. In the case of a hereditary sebait, this has the effect of accelerating the succession of the person who is entitled in law to succeed to his office. In the case of a Mutt, as the devolution of the office does not take place according to the ordinary rule of inheritance and the Mohunt himself has in many cases the right of appointing his successor, it is frequently seen that the Mohunt relinquishes the office after appointing his successor and putting him on the Guddi. If in such cases the appointment is held to be invalid, the office does not revert to the retiring Mohunt. The result is that there would be a vacancy in the office and it would have to be filled up in accordance with the usages of the institution (e).

Subsequent disability of the Mohunt whether occasions forfeiture.

If a Mohunt has been validly appointed, does he forfeit his rights by reason of his subsequent disability ? If by forfeiture is meant an *ipso facto* vacation of the office, the answer to the question would probably be in the negative but a disability may certainly be a ground for removal and whether it is such a ground or not, would depend, like all other matters relating to Mutts, upon the usages of the foundation.

The question whether subsequent lunacy operates as vacating the office of the head of the Mutt was raised and decided by the Madras High Court in the well known case of Vidyapurna V. Vidyanidhi (f). In this case the title of the plaintiff to the headship of a Mutt depended on the question as to whether on the date when the plaintiff was said to have been appointed, there was a vacancy in the office by reason of the last head of the Mutt having become a lunatic. If the lunacy of the Mohunt was a ground of forfeiture of his rights, the plaintiff would succeed in the suit assuming that the person who appointed him had the requisite authority to make the appointment. But if, on the other hand, there was no vacancy on

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(e) See Ram Parkash V. Annand—43 I.A. 73.
(f) 27 Mad. 435.

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account of the lunacy of the Mohunt, the plaintiff's suit would fail. The trial court held that there was no vacancy, even if the Mohunt had become insane and this decision was upheld by the High Court on appeal. In course of their judgments the learned Judges (Sir Subramania Ayyar, A.C.J. and Bhashyam Aiyyanger, J.) who heard the appeal discussed elaborately the legal position of the head of the Mutt and held that the Mohunt was not a mere trustee but a corporation sole having an estate for life in the permanent endowments and absolute power over the income of the Mutt properties. This view of law regarding the position of the Mohunt cannot be held to be correct in view of the later pronouncements of the Judicial Committee which I have discussed already. But the decision itself may be supported on general grounds. A Mohunt has undoubtedly a larger amount of beneficial interest in the endowed properties than a shebait has got and as I have told you already there is no reason why Mohuntship should not be regarded as a property as shebaiti right is held to be. Divesting of rights after they become vested in a person is always discouraged by Hindu Law, and subsequent disability never occasions a forfeiture of property already inherited. On this ground it can be held that subsequent lunacy would not operate as a forfeiture of the office. If the due discharge of the spiritual function of the office and the management and preservation of the endowment can be effected by some suitable agent, lunacy or for the matter of that any other physical or mental infirmity may not affect the rights of the Mohunt. That was the view taken by the learned Judges in the Madras case referred to above. But a question may legitimately arise that although the temporal affairs of a Mutt can be managed by a representative, is it possible to delegate the spiritual duties of the Mohunt to another person ? A Mohunt primarily has to perform the spiritual function of initiating people into the mysteries of his religious cult ; he is the proper person to impart religious training and minister to the spiritual wants of devotees and disciples. Could these duties be performed by a deputy ? All that we can say is that lunacy by itself would not *ipso facto* terminate the office. But it may be a ground for removal of the

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

Mohunt if the court or any other determining authority who has the right of removal considers that by reason of such disability it is not possible to the Mohunt to discharge his duties (g). The same principle applies to any other bodily infirmity or the contracting of a loathsome bodily disease. In Mohunt Bhagaban Das V. Roghunanda (h) leprosy was relied upon as a disqualification on the part of a Mohunt from adopting a Chela and it was held that it might be a disqualification if the disease was of a virulent type. The same principle may be invoked in cases where the Mohunt contracts leprosy subsequent to appointment. If it is of a virulent form and incapacitates him from performing his spiritual duties, it can certainly be considered to be a disqualification and may be a just ground for removal.

Removal of Mohunt.

Not merely bodily disease and mental infirmity but acts of misappropriation and waste which are injurious to the interests of the institution or the leading of an immoral life or doing of an act which is contrary to the tenets of the religious sect or is against the usages of the institution, would be grounds for removal. The jurisdiction to remove managers is not a penal jurisdiction. It is a purely civil jurisdiction which the court exercises as ancillary to the duty to see that the trusts are properly executed (i). Mere error of judgment cannot be a ground of dismissal ; the misconduct must be of such a character that the removal of the Mohunt from the office is deemed necessary in the interests of the institution itself (j). In Annaji V. Narayan (k) the management of an institution was found to be lax and improvident ; but not fraudulent or dishonest. The trustee asserted a claim against the trust inconsistent with his legal position but it was admitted that he did it under a mistake. In these circumstances, it was held that no sufficient case for removal was made out. "When the court has nothing but mistake, while it gives directions for the better management

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(g) See in this connection Nirmal V. Jyoti Prasad—45 C.W.N. 709.
(h) 22 I.A. 94.
(i) Vide Perumal V. Saminath—19 Mad. 498.
(j) See Tiruvengadath V. Srinivasa—22 Mad. 361,364.
(k) 21 Bom. 556.

CENTRAL LIBRARY

in future, it refuses to visit with punishment what has been transacted in the past" (l).

Wilful acts of mismanagement and misappropriation of trust funds, wrongful alienation of endowed properties, or pledging of endowed property for private purposes would ordinarily entail dismissal (m). Besides this it would be an unpardonable offence if a Mohunt, who is bound by the vow of celibacy, marries and leads an immoral life. The principles which would guide the courts in such matters were thus laid down by Sesagiri Aiyyar, J. in Tiruvambala V. Manikkavachaka (n). "Celibacy and a scrupulous avoidance of sexual indulgences are of the essence of the position held by these persons. Devotees of both sexes resort for initiation to them and it would cut at the root of the whole system if the heads of the mutts are permitted to live profligate lives. In the Narada Smriti it is stated 'राज एव हि दासः स्यात् खलः प्रव्रजतोऽपि सन्'. This power possessed by the King is delegated to the Courts ; and when a clear case is made out that a religious ascetic who ought to set an example of sexual purity is leading an immoral life, the Courts will find no difficulty in dismissing him from office. But it does not follow that suspected immorality entails forfeiture. This would lead to complications and would encourage baseless insinuations. Until the accusation is openly made and found, the incumbent should not be disturbed from his office. The learned vakil has quoted no authority for the extreme condition that a forfeiture is incurred by an ascetic's immoral conduct."

According to the usages prevalent in certain Sudra Mutts, the Mohunts are allowed to marry but even then immorality of other kind would be considered to be a disqualification (o).

Removal of a Mohunt can ordinarily be directed by court in an appropriate legal proceeding. But usages do exist, where the right of appointment belongs to a particular religious brotherhood and the same brotherhood can exercise the right of dismissal

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(l) Lelwin's Law of Trust (8th Ed.) p. 936.
(m) Vide Sreenath V. Radhanath—12 C.L.R. 370.
(n) 40 Mad. 177, 199.
(o) Vide Sathappayyar V. Periasami—14 Mad. p. 1.

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

also if the superior is found to be guilty of misconduct. In the case of Juro Ram Das V. Govinda Deb (p), the question arose in respect of the Barpeta Satra in Assam, where the assembly of Samuha Bhaktas was held to have the right of appointing as well as of dismissing the high priest. The defendant respondent was the existing high priest who was alleged to have been removed by this assembly of Bhaktas and the plaintiff appellant elected in his place. It was held by the High Court that the removal was not legal and the learned Judges in course of their judgment laid down the essential requisites for validating a removal of this character. It was held that in such cases the qualifications of the voters who can exercise their votes for such purposes must, in the first place, be carefully ascertained. The qualifications may depend upon the membership of the brotherhood, age, sex and residence. A question may also arise whether an individual or a family is to be regarded as a unit for this purpose. In the second place, in order that the decision of members assembled at a meeting may be operative, it must have been convened after sufficient notice and due proclamation. The decision of the majority must also be determined by reference to votes given at the meeting and cannot be made to depend upon views indicated subsequently in the course of a suit brought to contest the validity of the removal. The question of quorum, it was further held, would depend upon the usages of the institution.

In regard to the Madhwa Mutts at Uddipi, there is a custom that the Swamis of the different Mutts together with their disciples have a right to enquire into the immorality of one of the eight Swamis and on proof of the same, to outcast him when he would cease to be the head of the institution (q).

Private and Public Mutts.

A debutter endowment, as has been said already, can be either private or public. Does such distinction exist in the case of Mutt ? As a matter of law, there is no reason why Mutts also could not be classified as public and private. A public trust is created for the benefit of the public generally or of a section there-

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(p) 12 C.L.J. 49.
(q) Vide the cases referred to in Ganapathy Iyer's Law of Hindu and Mohammedan Endowments p. 491.

CENTRAL LIBRARY

of, which consists of an uncertain and indiscriminate body of persons. In a private trust the beneficiaries are a defined body of persons such as members of the family and the like. The formalities for the dedication of a Mutt which I have dealt with in the introductory lecture go to show that Mutts may be dedicated for the use of ascetics generally. If that is the case, such Mutts would be regarded as public institutions. Mutts have generally Sadavrats or arrangements for feeding and giving shelter to wayfairers and ascetics attached to them. They may also have temples to which the public is allowed access. Such circumstances might indicate the public character of the endowment, but nevertheless it is not impossible to have a private Mutt where the endowment is not intended to confer benefit upon the public generally, or even upon the members of a particular religious sect or order. Examples occur where the founder may grant property to his spiritual preceptor and his disciples in succession with a view to maintain one particular spiritual family and for perpetuation of certain rites and ceremonies which are deemed to be conducive to the spiritual welfare of the founder and his family. In such cases, the original grantor and his descendants are the only persons interested in seeing that the institution is kept up for their benefit. In cases like these, even if a few ascetics are fed occasionally or a water pandal is erected during the hot season to supply drinking water to thirsty pilgrims, they are not to be regarded as independent charities in which any class of public can claim any direct interest. Such charities appertain to a private debutter as well (r). In Matam Nadipudi V. Board of Commissioners for Hindu Religious Endowments, Madras (s), the Madras High Court affirmed the existence of a class of private Mutts where the property is given to the head of a Mutt for his personal benefit only. There is no intention in such cases to fetter the donees with any obligation in dealing with the gifts or to make them accountable in a court of law for their manner of dealing with them. Strictly

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(r) See Satappayyar V. Periasami—14 Mad. 1.
(s) A.I.R. (1938) Mad. 810.

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speaking, these are not trust endowments at all. They are personal gifts to an ascetic which must be held to be his personal property. It is a misomer to describe these gifts as Mutts at all. By private Mutts should be meant those institutions where the head or superior holds the property not on behalf of an indeterminate class of persons or a section of the public, but for a determinate body of individuals namely the family or descendants of grantor.

Thus far, I have discussed with you in details the different legal questions associated with the two principal types of religious trust in Hindu Law known as debutter and Mutt. In the second and third lectures I have attempted to deal generally with all forms of religious and charitable trusts known to Hindu law and I have pointed out to you the essential requirements for their creation and the legal consequences flowing therefrom. You would remember that in Hindu Law charity and religion overlap each other and in fact charity is included in the wider conception of religion. Purely charitable trusts unconnected with religion are also to be found in various forms in Hindu law. Thus trusts for establishing Dharamsalas, choultries, rest houses, schools, dispensaries, Alms Houses or for giving food and shelter to those who suffer from bodily infirmities are normal benefactions created by generous minded Hindus. In most cases there are specific instruments of trust governing these dispositions. Even when there is no written document, institutions like schools, hospitals and dispensaries come under the supervision and control of the Education and Health Departments of the State and are governed by special rules laid down by authority. Many foundations like Dharamsalas, choultries, rest houses are seen even at the present day, the origin of which are not known and which are governed generally by usages of ancient origin. Dharamsalas, choultries and other similar institutions as I have said already may be created under Hindu Law without any written instrument provided the essentials of a valid dedication are complied with. Usually management and control of these institutions are vested in the founder or his heirs though occasionally instances are found where there is some sort of hereditary managership created by the founder.

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As I have told you before, the property dedicated for these purposes must be deemed to vest in law in the institutions themselves and the administrators or those who are in charge of the charities would occupy the position of trustees in the general sense. In the few succeeding chapters I will take up for discussion the remedies for breaches of trust which are available to beneficiaries or persons interested in the different forms of religious and charitable trust or which are enforceable by the State by virtue of its special jurisdiction as protector of all properties devoted to religious and charitable uses in the realm.

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LECTURES X, XI & XII.

Enforcement of religious and charitable trusts ; remedies for breaches of trust ; suits and judicial proceedings in relation thereto.

Remedies for breaches of charitable trust in English law.

In English law charitable trusts are synonymous with public trusts and what is called religious trust is only a form of charitable trust. The beneficiaries in a charitable trust being the general public or a section of the same and not a determinate body of individuals, the remedies for enforcement of charitable trust are somewhat different from those which can be availed of by beneficiaries in a private trust. In English law the Crown as *parens patriæ* is the constitutional protector of all property, subject to charitable trusts, such trusts being essentially matters of public concern (a) ; and the Attorney General, who represents the Crown for all forensic purposes, is accordingly the proper person to take proceedings on this behalf and to protect charities (b). Whenever an action is necessary to enforce the execution of a charitable purpose, to remedy any abuse or misapplication of charitable funds, or to administer a charity, the Attorney General is the proper plaintiff, whether he is acting alone *ex officio* as the officer of the Crown and as such the protector of charities, or *ex relatione*, that is to say at the request of a private individual called a 'relator' who thinks that the charity is being or has been abused (c). The Attorney General appears not as an ordinary plaintiff to obtain redress for a private wrong but rather as an officer of the Crown informing the Judge, another officer of the Crown, of some neglect on the defendant's part in the performance of a public duty and demanding a remedy (d). That is why such actions were called 'informations' and the name was dropped only after the Supreme Court of Judicature Act 1873.

(a) A.G. V. Brown—(1818) 1 Swan 265.
(b) Eyre V. Countess of Shaftsbury—(1724) 2 P.W. M 103.
(c) Halsbury's Laws of England, 2nd Edn. Vol. IV. pp. 372-73.
(d) Tudor on Charities, 5th Edn. p. 342.

CENTRAL LIBRARY

The Court of Chancery in England exercised jurisdiction in cases of charitable uses even before the passing of the well known Statute of Elizabeth. The power is now vested in the High Court of Justice and causes and matters for the execution of trusts, chari table or private, have been assigned to the Chancery Division. The jurisdiction, as already indicated, is more extensive when the trust is charitable than in case of a private trust and the court has jurisdiction not only to enforce and redress all breaches but also in certain circumstances to alter or modify the trust in a greater or lesser degree in accordance with the *cypres* doctrine (e).

Visitors.

In English law there is a 'visitatorial' power attached to all eleemosynary corporations. A visitor has the right to settle disputes between members of the corporation, to inspect and regulate their actions and generally to correct all abuses and irregularities in the administration of charity (f). The law allows to the founder of an eleemosynary institution full powers to make regulations for its creation and such powers include the right of nominating visitors. Under the law of England as it stood before 1926, if a private person was the founder of a charitable corporation, then he and his heirs became automatically the visitors. The descent of the rights of a visitor to heirs has now been abolished by the Administration of Estates Act 1925 and it is not clear as to who would be visitor in default of appointment by the founder. Most probably such rights would devolve upon the Crown as they did when the founder's heirs became extinct or could not be found or the heir was a lunatic.

The duties of visitors vary according to the terms of the foundation and ordinarily include the settling of questions arising out of the internal management of a charitable corporation and the interpretation of statutes relating to the foundation. They cannot, however, interfere in matters over which the corporators have a discretion or with the internal management unless the trusts of the foundation are disregarded. The Court again can not control the dis-

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(e) Vide Halsbury's Laws of England, 2nd Edn. Vol. IV p. 346-7.
(f) Vide Philips & Bury—(1788) 2 T.R. 346, 352.

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cretionary powers of a visitor unless they are exercised corruptly or dishonestly and a prohibition can be granted only if a visitor exceeds the limits of his authority (g).

Charity Commissioners.

In England there is a statutory body known as Charity Commissioners, who exercise powers under the various Charitable Trusts Acts. The object of these Acts is to protect property subject to charities against losses and to promote a simple and economic way of carrying out the charitable intentions of the founder where such intentions are inadequately expressed in the instrument of foundation (h). These Charity Commissioners have inquisitorial, administrative and to some extent judicial powers. They may inquire into the conditions and management of charities within their jurisdiction and for this purpose require accounts, statements and written answers to enquiries verified by oath or otherwise from the trustees and other persons having custody of trust funds and documents or otherwise in possession of facts relating thereto. They can also, if applied to by trustees or other persons connected with the administration of charity, give their opinion or direction or advice respecting the administration, and any person acting on such advice or opinion would be indemnified for any loss except in cases where the opinion was proved to have been obtained by wilful misrepresentation or suppression of facts. Their sanction is also necessary for institution of certain legal proceedings.

Board of Education.

By the Board of Education Act 1899, a Board of Education was established charged with the superintendence of matters relating to education in England and Wales.

It is neither necessary nor profitable for our purpose to enter into details regarding the functions of these statutory bodies or to discuss the various matters that arise in connection with actions that can be brought by or with the sanction of the Attorney General in England. The jurisdiction and the procedure relating to such matters are now regulated by

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(g) Vide Halsbury's Laws of England, 2nd Edn. Vol. IV pages 345 and 352.

(h) Halsbury, Vol. IV ; p. 355.

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Sir Samuel Romilly's Act, the object of which is, as stated in the preamble, to provide "a more summary remedy in case of breaches of trust created for charitable purposes as well as for the just and upright administration of the same."

This short outline of the general principles of English law would be useful to you only to understand the different legislations in our country in relation to public religious and charitable trusts which are to some extent based upon the rules and principles of English law. One fundamental distinction between English and Indian law lies in the fact that there can be religious trust of a private character under Hindu law which is not possible in English law. So far as public religious and charitable trusts are concerned, there are certain legislative enactments in this country which impose some amount of control upon the administration of such trusts and provide for remedies in cases of maladministration. Apart from these statutory provisions, there is also the general law of the land which can be invoked in aid of enforcement of these trusts. So far as private religious trusts are concerned, there are no specific statutory enactments and the whole thing is regulated by the general law of the land. For purposes of convenience, I will take up for discussion first the law relating to enforcement of public religious and charitable trusts of the Hindus in India.

Control exercised by ancient rulers over religious endowments.

I have told you already that from very early times the religious and charitable institutions in this country came under the protection of the ruling authority. There are indeed no clear written texts directly bearing on the subject and the text of Narada, which says that "a king can reduce to slavery a Sanyashin who is guilty of incontinence" suggests only in a vague way that the king had some sort of jurisdiction over religious bodies and institutions. As I have pointed out, however, there was undoubtedly some sort of customary law in India relating to temples and endowments which in the last resort had to be enforced by the king. The Smriti writers make it a duty on the part of the king to uphold the customs and usages of the land unless they are contradictory to revelation ; and Mitakhara in commenting upon a passage of Yagnavalka relating to enforcement of

CENTRAL LIBRARY

customs expressly refers to customs in connection with management of temples (i). The duty of protecting endowment is one of the primary duties of the king as mentioned in Sukraniti and other treatises (j), and this is borne out by various historical documents which exist even at the present day (k). That such jurisdiction existed in ancient times has been asserted in more than one pronouncement of the Judicial Committee as well as of the other High Courts in India. In Raju Muttu Ramlinga V. Perianayagum (l), it was observed by the Privy Council that there could be little doubt that this superintending authority over temples and religious endowments was exercised by the old rulers. Sir Montague Smith in course of his judgment in this case relied upon the opinion expressed by Nelson in his Madura Manual that "the Dharmakartas of the Pagodas had but little communication with one another and regarded no earthly superior except the king himself. Each was independent of all control and acted altogether as he pleased. This freedom naturally led to gross abuses and the king was compelled to interfere in the management of some of the churches (m). Much in the same strain are the observations of West, J. in Manohar Ganesh V. Lakshmiram (n) that "under the native system of Government though it was looked upon as a heinous offence to appropriate to secular purposes the estate that had once been dedicated to pious uses, yet the State in its secular executive and judicial capacity habitually intervened to prevent fraud and waste in dealing with religious endowments."

Similar rights of control asserted by the British Government.

The British Government, when it was established in India, following the tradition of the former rulers, asserted, by virtue of its sovereign authority, the right to visit public religious and charitable endowments and prevent and redress abuses in their management. What the extent and character of

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(i) See Gharpur's Mitakshara p. 329.
(j) Vide Sukraniti, Chap. IV. v. 9.
(k) Vide G. Iyer's Law of Endowments, 2nd Edn. p. 23-25.
(l) 1 I.A. 209 at 233.
(m) Nelson's Madura Manual, Part III Ch. 7 p. 162.
(n) 12 Bom. 247 at 260.

CENTRAL LIBRARY

these rights were it is difficult to define precisely. Though spoken of as rights of 'visiting', they were certainly not identical with visitorial rights as they exist in English law. The powers obviously included those of superintendence and the proper appropriation of the endowments of both Hindu and Mahomedan temples and religious establishments, the preservation of the structures of such institutions and the management of their affairs through trustees or managers. Evidence was given in a Madras case (o) that the Pagoda funds were in a particular case employed for the construction of bridges and other public works and even for setting hired watchers to detect thefts within the Pagoda. Such instances may be ignored as exceptional cases. On the whole, the powers exercised by the Government were of the same type as were subsequently entrusted to the Board of Revenue by the Bengal and Madras Regulations of 1810 and 1817 respectively. Even prior to the passing of the Regulations it appears that this superintending authority was exercised through the agency of Collectors of the Districts.

Bengal and Madras Regulations.

With regard to public religious and charitable endowments a Regulation was passed in Bengal in the year 1810 (being Regulation XIX of 1810) and one for Madras in the year 1817 (being Regulation VII of 1817). These Regulations vested the general superintendence of all public endowments in the Board of Revenue and prescribed the duties to be performed by the Board to prevent misappropriation of the funds. In fact, they defined the manner in which the sovereign rights of the British Government were to be exercised in relation to the temples and the endowments. Each of these regulations consists of 16 sections and the language though not identical is almost similar. We may glance through the sections of the Madras Regulation just to have an idea of the nature of the provisions made in these laws.

The preamble to the Madras Regulation of 1817 after stating that large endowments had been granted by former Governments as well as by the British

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(o) See Ramiengar V. Gnanasambanda—5 Mad. H.C. R. 53 at 57.

CENTRAL LIBRARY

Government and individuals for the support of temples and that the produce of such endowments were in many instances misappropriated, declared it "to be the duty of the Government to provide that all such endowments be applied according to the real intent and will of the grantor." Under section 2, the general superintendence of all endowments in land or money granted for the support of ..... Hindu temples or colleges or for other pious and beneficent purposes and of all buildings such as bridges, choultries and chatrams is vested in the Board of Revenue. Under sections 3 and 5, a duty is imposed upon the Board of Revenue of seeing that the endowments are appropriated to the purposes for which they are granted and to the repairs of the buildings ; and under section 4, the Board is empowered to dispose of buildings which cannot be repaired. Section 7 empowers the Board of Revenue to employ local agents in each district who would be subject to their control, to carry on the duties entrusted to the Board. Section 8 provides that the Collector in each Zilla shall be ex-officio one of such agents. Under section 9, which corresponds to section 10 of the Bengal Regulation, it is the duty of the local agents among others to report to the Board of Revenue any instance in which they may have reason to believe that lands or buildings or the rents or revenues derived from lands are unjustly appropriated. Under section 10, the agents have got to report to the Board the names of the present trustees and managers of such institutions and by what authority they were appointed. Under section 11 again the local agents are to report to the Board of Revenue of all vacancies in the offices of the trustees, managers or superintendents, whether these offices are hereditary or in the nomination of the Government and in the latter case to recommend fit and proper names for approval and confirmation by the Board. After such report is received, section 13 requires the Board either to appoint the persons nominated or to make such other provisions for the management or superintendence as may seem to them to be right and proper. Section 15, which corresponds to section 16 of the Bengal Regulation, expressly lays down that the object of the Regulation is solely to provide for the due appropriation of lands

CENTRAL LIBRARY

or other endowments granted for public purposes, agreeably to the intent of the grantor and not to resume any part of them or their produce for the benefit of Government.

These Regulations certainly did not extend to the whole of India and were confined to the Madras and Bengal Presidencies. In Bombay there was a Regulation viz. Regulation XVII of 1827 which related to endowments of this character. On the whole, the control exercised by the Board of Revenue was very much beneficial to the institutions and the system was allowed to continue till 1841 and 1842, when in deference to strong objections taken by some persons in England to the exercise of control over Hindu and Mohammedan religious establishments by a Christian Government, the Board was advised to withdraw, as far as possible, from active management of the religious institutions. No alteration however was made in the Statutes till 1863 when the Religious Endowments Act (Act XX of 1863) was passed. This Act repealed the Bengal and Madras Regulations so far as they related to purely religious institutions and the control exercised by the Board of Revenue and local agents was transferred to non-official committees constituted under the Act. Though the Regulations are no longer applicable to religious endowments, yet their provisions are still material for the purpose of determining the cases which would attract the operation of the Religious Endowments Act, the Act being applicable only to those religious institutions, which came within the purview of the Regulations.

Religious Endowments Act of 1863.

It would be convenient at this stage to examine briefly the urovisions of the Religious Endowments Act. The Act divides all public religious endowments into two classes, which are described in section 3 and 4 respectively. Section 3 deals with cases in which at the time of the commencement of the Act the temple or other religious establishment was one to which the Bengal or Madras Regulation applied and it was an institution in which the right of nomination of the trustees, manager or superintendent thereof was vested in or was exercisable by the Government or any other public officer or such nomination was subject to the confirmation of the Government or any other public officer. Section 4 on the other hand

CENTRAL LIBRARY

relates to cases in which the nomination of the trustee, manager or superintendent did neither vest in nor was subject to the confirmation of the Government or any public officer. In the first type of cases covered by section 3, the procedure to be followed is detailed in sections 7 to 12 of the Act. Section 7 provides that in all cases coming under section 3 of the Act the local government shall appoint one or more committees in every district or division to take the place and exercise the powers of Board of Revenue and the local agents under the repealed Regulations. Such committee shall consist of 3 or more persona and section 8 lays down that they shall be appointed from among persons professing the religion, for purposes of which the religious establishment was founded or maintained and in accordance with the general wishes of those who are interested in the maintenance of the institutions. For purpose of ascertaining the general wishes of such persons, the local government is entitled to cause an election to be held under such rules as may be framed by them. Under section 9 every member of the committee thus appointed shall hold his office for life unless removed for misconduct or unfitness by an order of the court. Section 10 lays down the procedure to be followed in filling up any vacancy among the members of the committee. Section 11 forbids any member of the committee to be also a trustee, manager or superintendent of the institution ; and section 12 provides that on the appointment of such committee the Board of Revenue and the local agents functioning under the Regulations shall transfer to such committee the properties of the endowment in their possession or under their superintendence.

In case of religious endowments in which the right of appointment is not vested in or subject to confirmation of Government, the properties controlled by the Board of Revenue are transferred by section 4 itself to the trustee or manager as the case may be ; and the entire management of the institution would vest in such trustee or manager (section 6). If any vacancy occurs in the office of any such trustee, power is given by section 5 of the Act to any person interested in the temple or establishment or in the performance of the

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ADVANCEMENT OF LEARNING
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worship or of the service thereof, to apply to the civil court to appoint a manager of such institution ; and the manager thus appointed by the civil court was to act as such unless some other person shall, by suit, have established his right of succession to the said office.

The position, therefore, is that the control exercised by the Board of Revenue under the Regulations was given up in regard to the institutions where the right of nomination of trustees, manager or superintendent was not vested in or subject to confirmation of Government. In other cases where the Goverment or any public officer had the right of making or confirming the nomination the control of a committee constituted under the Act was substituted for that of the Board of Revenue under the Regulations.

The property of the endowment does not vest in the committee.

It may be mentioned here that under section 12 of the Act mentioned above, the properties of the endowment do not vest in the committee. The properties remain with the idol or the institution as the case may be and the trustees or managers are competent to institute suits or proceedings in relation to them (p). The duties of management are really carried on by trustees or managers subject to the supervision of the committee and the courts would not ordinarily interfere with the acts of the committee provided the members of the committee are not proved to have acted dishonestly or in excess of their authority. In Seshadri Ayyangar V. Nataraja (q), the plaintiff, who was appointed a trustee of a Hindu temple, under the Religious Endowments Act of 1863, was suspended from his office by the temple committee on certain complaint being made against him without calling from him any explanation. As he refused to acquiesce in the order of suspension, the committee dismissed him altogether. On a suit being filed by him against the committee it was held by the High Court that a trustee in the position of the plaintiff could not be dismissed from office except on good cause shown and that his conduct subsequent to

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(p) Vide Sankara Murthi V. Chidambaram—17 Mad. 143.
(q) 21 Mad. 179.

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the order of suspension did not amount to such good cause. The order of suspension itself was held to be illegal.

Jurisdiction of civil court not taken away because of the existence of the committee.

The fact that a temple committee has been appointed does not oust the general jurisdiction of the court to make any order that it considers necessary for due administration of the trust. The true principle undoubtedly is, that the courts would not ordinarily interfere with the statutory powers conferred upon the members of the temple committee so as to deprive them of their legitimate functions. But the general right of a subject to ask for the court's assistance to set right abuses or to have other remedies independent of the statute is not thereby taken away. In England it is settled law that the court's jurisdiction to make suitable orders in case of a charitable trust is not in any way affected by reason of the existence of visitatorial powers. In Attorney General V. St. Cross Hospital (r) Sir Samuel Romilly observed as follows :

"The only remaining point then on this part of the case is whether the jurisdiction of this court is taken away by reason of the visitorship of the Bishop of Winchester. If this were the law it would be very unfortunate, for it does not require the history of this case to teach us that the visitorship vested in any one whether a corporation sole or aggregate or the heir of the founder is a mere nominal office, the duties and functions of which are rarely if ever spontaneously performed. But the law is not so. Where there is a clear and distinct trust this court administers and enforces it as much where there is a visitor as where there is none. This is clear both on principle and on authority." It was held by the Madras High Court in Sitharama Chetty V. Sir S. Subramaniya Ayyar (s) that in spite of there being a committee constituted under the Religious Endowments Act the court has jurisdiction to frame a scheme under section 92 of the Civil Procedure Code and introduce changes in the administration which the committee is not legally competent to introduce but what the court considers

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(r) 17 Beav. 435.
(s) 39 Mad. 700.

CENTRAL LIBRARY

desirable to meet the altered circumstances of the time.

Section 13 and the liability of trustees to keep accounts.

Section 13 of the Act is divided into two paragraphs. The first paragraph imposes upon all trustees, managers and superintendents the duty of keeping accounts. This applies to endowments coming both under sections 3 and 4 of the Act and irrespective of the fact as to whether or not there is a temple committee appointed in respect to such an establishment. The second paragraph applies where a temple committee is appointed and it has been made the duty of the temple committee to require the production of such accounts at least once a year. It would not be proper to confine the operation of the first paragraph of the section also to cases where a temple committee is functioning. It is when there is a temple committee in existence the accounts would have to be produced before such committee, but that does not mean that otherwise the trustees are not bound to keep accounts at all.

Section 14 and the right of suit.

Section 14 of the Act lays down an important provision under which any person or persons, interested in a religious establishment, may institute suits against trustees, managers, superintendents or members of the temple committee for any misfeasance, breach of trust or neglect of duty and empowers the court to direct specific performance of an act, award damages and remove the trustee, manager or superintendent. The nature of the interest entitling a person to institute such suits is described in section 15. It need not be a pecuniary or immediate interest or such an interest as would entitle the person receiving it to take part in the management or superintendence of trusts. Any person having a right of attendance or having been in the habit of attending the performance of the worship or service of any religious establishment or partaking in the benefit of any distribution of alms, shall be deemed to be a person interested within the meaning of section 14. Under section 18 such suits could be instituted only after obtaining leave from the court on a preliminary application and the court shall grant leave on being satisfied that there are sufficient *prima facie* grounds for the institution of the suit. Section 18 further provides that if the court is satisfied that the suit has been for the benefit

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of the trust and no party to the suit was to blame, it may direct the whole or any portion of the costs of the suit to be paid out of the estate. The court spoken of in the Act is the principal civil court of original civil jurisdiction in the district. Sections 16 and 17 expressly provide for reference of any matter in dispute in such suit to arbitration.

The provision of section 14 is perfectly general in its character and it gives any person, who has any kind of interest in a religious institution, right to institute suits for prevention or redress of maladministration. The provision of section 92 of the Civil Procedure Code, as I shall point out to you later on, is more comprehensive and differs in some respects from that of section 14. So far as the forms of relief to which both these provisions relate are the same, persons interested in the trust have certainly the choice to proceed either under section 14 of the Religious Endowments Act or under section 92 of the Civil Procedure Code. There are three kinds of relief which can be given in a suit under section 14. In the first place, the court may direct a specific performance of an act as for example, to build a temple with funds raised for it. In the second place, it may decree damages and costs against a trustee, manager or member of a committee ; and lastly it may direct the removal of such trustee, manager, superintendent or member of the committee. The section does not empower the court to frame a scheme for the management of the temple (t). Undoubtedly section 14 creates a special jurisdiction in civil courts for the purpose of deciding matters relating to public religious trusts and to that extent the jurisdiction is exclusive and restrains suits in the ordinary way. On the other hand, it gives special facilities for such suits which can be brought by any person interested in the endowment. It should be borne in mind that the Religious Endowments Act does not apply to the Presidency towns and the jurisdiction that was exercised by the Supreme Courts in the Presidency towns in India and is now vested in the High Courts at those places

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(t) See Sitharama Chetty V. Sir S. Suhramaniya Ayyar—39 Mad. 700.

CENTRAL LIBRARY

is not in any way affected by the provisions of Religious Endowments Act. The Supreme Court could exercise the same powers as could be exercised by equity courts in England in the matter of public trusts and section 41 of the East India Company Act 1813 conferred powers on the Advocate General similar to those of the Attorney General in England. It was observed by Sir Richard Garth, C. J. in Panchcowree Mal V. Chumroo Lal (u), "we do not consider that the legislature had in its contemplation to interfere with the procedure of the Supreme Court in reference to trusts concerning property which could not under any circumstance come under the direct control of Government. Such a suit as the present is not brought under Act XX of 1863, but under the ordinary original jurisdiction of this court inherited from the Supreme Court and conferred upon the Supreme Court by its charter, a jurisdiction similar in its general features to that of the Lord Chancellor in England." The Act is also not in force in the Province of Bombay with the exception of North Canara.

Section 19 of the Act empowers the court before giving any leave under section 18 or after such leave is given and at any time during the proceeding of the suit to order the trustee, manager, superintendent or any member of the committee to file in court the accounts of the trust. Section 23 leaves the Government control unaffected in regard to non-religious charitable trusts or buildings of antiquity and of historical value which are not affected by this Act at all. Where the endowments are partly for religious and partly for secular purposes, section 21 allows the Board of Revenue to determine what portion of the endowment shall remain under its superintendence for secular purposes and what portion of it should be transferred to the trustee, manager or the committee.

The Religious Endowments Act cannot be said to provide adequate protection to public religious trusts against abuses which led to their control by the State. The remedies provided by the Act certainly do not go far enough. The only legislative provision which attempts to remedy in a large measure

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(u) I.L.R. 3 Cal. 563 at 572.

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the abuses in the management of public charities is that contained in section 92 of the Civil Procedure Code. I will have to discuss that provision in detail ; but before I do that it may be convenient to notice two other legislative enactments, one of which is the Charitable Endowments Act of 1890 and the other the Religious and Charitable Trusts Act of 1920, both of which aim at providing for some special remedies in the matter of administration of religious and charitable trusts. The Act of 1890 relates exclusively to public trusts for charitable purposes unconnected with religious teaching or worship, while the later Act deals with both religious and charitable trusts.

Charitable Endowments Act, 1890.

The object of the Charitable Endowments Act, as the preamble shows, is to provide for the vesting and administration of property held in trust for charitable purposes. Section 2 of the Act defines 'charitable purpose' as including "relief of the poor, education, medical relief and the advancement of any other object of general public utility but not including a purpose which relates exclusively to religious teaching or worship." Section 3 empowers the Governor General-in-Council to appoint an officer of the Government called "the Treasurer of Charitable Endowments" for the territories subject to any local Government. On application by the author of a trust or by the trustees themselves, if they have been already appointed, the local Government may order, by notification in the official gazette, that the trust property be vested in the Treasurer of Charitable Endowments on such terms as may be agreed on between the local Government and the applicant (v). The local Government may also settle a scheme in such cases for the administration of any property which has been or is to be vested in the Treasurer of Charitable Endowments. The scheme so settled may, in a similar manner, be modified or substituted by another scheme (w). The other provisions are not much material for our present purpose.

Charitable and Religious Trusts Act.

The Charitable and Religious Trusts Act is not confined to non-religious charitable trusts but applies to religious trusts as well. The Act is intended to

(v) Section 4.
(w) Vide section 5.

CENTRAL LIBRARY

provide facilities for the obtaining of informations regarding trusts created for public purposes of a charitable or religious nature and to enable the trustees of such trusts to obtain the direction of a court on certain matters and to make special provisions for the payment of the expenditure incurred in certain suits against the trustees of such trusts. The expression 'court' in the Act means the Court of the District Judge or any other Court empowered in that behalf by the local Government and includes the High Court in the exercise of its ordinary original civil jurisdiction (x). Section 3 of the Act provides that any person having an interest in any express or constructive trust created or existing for a public purpose of a charitable or religious nature may apply by petition to the court within the local limits of whose jurisdiction any substantial part of the subject matter of the trust is situate, to obtain an order embodying all or any of the following directions viz. :- (1) Directing the trustee to furnish the petitioner through the court with particulars as to the nature and objects of the trust and of the value, condition, management, and application of the subject matter of the trust and of the income belonging thereto or as to any of these matters ; and (2) directing that the accounts of the trust shall be examined and audited.

The period of accounting is limited to three years prior to the date of the petition. Section 4 provides that such petition is to be in writing, signed and verified in the manner prescribed by the Civil Procedure Code for signing and verifying plaints. Section 5 prescribes the procedure to be followed in dealing with such petition. The court has got first to satisfy itself on such enquiry, as it thinks proper, whether the trusts to which the petition relates is a trust to which this Act applies and the petitioner has an interest therein. After that, it shall fix a date for the hearing of the petition and cause a copy of the same to be served upon the trustee or any other person to whom in its opinion notice of the petition should be given.

(x) Vide section 2.

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It would be open to the opposite party to the petition to file a written statement signed and verified in the manner prescribed for signing and verifying of pleadings in the Civil Procedure Code. On the date of hearing if the opposite party denies the existence of the trust or denies that it is a trust to which this Act applies and undertakes to institute, within three months, a suit for a declaration to that effect, the court shall order stay of the proceedings and the stay will continue so long as the suit is not finally decided. If, however, no undertaking is given or if after the expiry of three months, no suit is instituted. the court shall itself decide the question and give such direction as it thinks proper. It is expressly provided that the court shall not try or determine any question of title between the petitioner and any person claiming title adversely to the trust. If a trustee without any reasonable excuse fails to comply with an order made by the court as mentioned above, such trustee shall, without prejudice to any other penalty or liability which he may incur under any other law, be deemed to have committed a breach of trust affording ground for a suit under the provisions of section 92 of the Civil Procedure Code.

Under section 7 power is given to the trustee of a public trust for charitable or religious purpose to apply to the court for the opinion, advice or direction of the court on any question affecting the management or administration of the trust property, and the court shall give its opinion, advice or direction as it considers proper. The court, however, should not give an opinion, advice or direction on any question which it considers to be a question not proper for summary disposal. The other important provision is that contained in section 10, under which the court is empowered in any suit under section 14 of the Religious Endowments Act or section 92 of the Civil Produre Code, on the application of the plaintiff and on hearing the defendant to make an order directing the defendant, either to furnish security for any expenditure incurred or likely to be incurred by the plaintiff in instituting and maintaining such suit or to deposit such sum as the court considers sufficient to meet such expenditure either in whole or in part. When any money has been deposited in accordance with the

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order thus made, the court may make over to the plaintiff the whole or any part of such sum for the conduct of the suit subject to taking such security from him if it is considered proper. The only substantial advantage which persons interested in the trust may gain by following the procedure laid down in the Act is to obtain material informations relating to the trust. Of course, the trustee may refuse to give informations, but in that case the petitioner gets this advantage that such act on the part of the trustee amounts to a breach of trust within the meaning of section 92 of the Civil Procedure Code. The whole procedure, however, is of a summary character and no decision on any point is final or can operate as *res judicata*. Section 12 of the Act expressly lays down that no appeal shall lie from any order passed or against any opinion, advice or direction given under the Act.

Section 92 of the C. P. Code.

I now come to section 92 of the Civil Procedure Code. The section, as it stands at present, is a reproduction, with certain changes, of section 539 of the Civil Procedure Code of 1882. In the Civil Procedure Code of 1859 there was no special provision for institution of suits in relation to public charities. The provision was made for the first time in the Code of 1877. The words used in the Code of 1877, however, were "trust created for public charitable purposes" and it was held that they did not apply to religious trusts or to trusts which were both religious and charitable (y). In the Code of 1882 the expression "public charitable or religious purpose" was used and to remove all ambiguity it has now been replaced by the words "public purposes of a religious and charitable nature" in the present Code. Clauses (a) and (d) of section 92 were not in section 539 of the old Code, though with the exception of a few dissentient opinion they were held to be included within the other clauses of the section, particularly the last clause. The additions made in the present section have set at rest all doubts on these points. Another point upon which there was conflict of opinion under the

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(y) Vide Lutifunnessa V. Naziran—11 Cal. 33 ; Thanga V. Arumga —5 Mad. 383.

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old Code was, as to whether the provision of this section was mandatory or was mere enabling and permissive. If it was mandatory, a suit of the character mentioned in the section would have to be brought in accordance with these provisions and not otherwise. On the other hand, if it was permissive, the right of suit that existed independently of this section would not be taken away and it would be open to the aggrieved party either to avail himself of the form of remedy laid down in this section or else to institute proceedings under the law as it stood prior to the introduction of this section. The conflicting views taken on this point were discussed by Mr. Justice Woodroffe of the Calcutta High Court in Budreedas V. Choonilal (z), and the learned Judge himself was of opinion that section 539 was not mandatory ; it was cumulative and not restrictive in its effect. In the opinion of Woodroffe, J. if a suit was maintainable prior to the enactment of the section 539 of the Civil Procedure Code it could be instituted independently of that provision even though it was upon such a cause of action and for such relief as were mentioned in it.

This conflict is now ended by enactment of sub-section (2) which clearly lays down that the jurisdiction that is created by the section is a special jurisdiction in regard to a class of cases which the section contemplates ; and to the extent that a special procedure is laid down for such cases the procedure is compulsory, non-conformity with which would be fatal to the obtaining of any relief in suits of that character. The only exception provided for by sub-section (2) is in regard to suits under the Religious Endowments Act. The Religious Endowments Act, as you have seen already, does not apply to purely charitable endowments. It deals only with religious endowments, whereas section 92 of the Civil Procedure Code deals both with charitable and religious trusts. The only relief claimable under the Endowments Act is the removal of the manager and that on grounds of 'misfeasance, breach of trust or neglect of duty.' There is no provision for appointment of new trustees under the Endowments Act nor for settlement of a

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(z) 33 Cal. 789.

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scheme. But in case of religious endowments of a public character to which the Act applies, it is open to the party to proceed either under the provisions of that Act or in conformity with the requirements of section 92 of the Civil Procedure Code, if the reliefs claimed by him are such as are obtainable under both the provisions.

The object and scope of sec. 92.

In framing section 539 of the old Code the legislature undoubtedly had before it, as a model, Sir Samuel Romilly's Act in England. The language of the two provisions are, however, not the same and one material difference lies in the fact that the procedure under the English Act is of a summary nature commenced by an application, whereas in the Indian Code it has been given the form of a regular suit which is not to be tried in a summary manner. It is not pertinent to discuss as to how far the decisions of English courts given under Lord Romilly's Act can be invoked as authorities for deciding cases under section 92 of the Civil Procedure Code. They may not be altogether irrelevant, though it would not be proper for an Indian Court to base its decision exclusively upon them (a). As has been said already, the powers of the Chancery Courts in England in relation to enforcement and administration of charitable trusts were vested in the Supreme Court established in the three Presidency towns in India and these powers were inherited by the High Courts in those places. In mofussil courts, outside the Presidency towns, the jurisdiction to give relief in matters of public trust was based upon justice, equity and good conscience. The nature of this jurisdiction was not clearly defined and there was some uncertainty regarding its extent. Thus it was doubtful whether any relief could be given where no breach of trust was alleged (b), or whether the court could order a scheme to be framed (c). There were also other practical difficulties in the matter of instituting suits. In a public trust the persons interested are the members of the general public or at least an indeterminate part of it and ordi-

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(a) Vide the observations Mookerjee J.I. Budh Sing V. Nirod 2 C.L.J. 431.
(b) See Kalichuran V. Golabi—2 C.L.R. 128.
(c) Vide Ganapati V. Savithri—21 Mad. 15.

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narily it is not possible for all persons interested in a public trust to be made parties to a suit. The only relief possible was under section 30 of the old Civil Procedure Code which corresponds to Order 1 Rule 8 of the present one ; but that too was neither convenient nor effective in all cases. The jurisdiction of both the High Courts and the mofussil tribunals is now affirmed and controlled by section 92 of the Civil Procedure Code and a special procedure has been laid down which while obviating the inconveniences inherent in suits in which a large and indefinite number of persons are interested, has at the same time provided an effective check upon reckless and harassing litigation. As a suit under section 92 of the Civil Procedure Code is a representative suit, the court is enabled to decide effectively and finally what is best in the interests of the public, whenever a case relating to administration of public religious and charitable trust comes up before it under section 92 of the Civil Procedure Code.

Conditions to be fulfilled in a suit under Sec. 92 C. P. Code.

To attract the operation of section 92, the suit must be of a certain character and pray for certain reliefs. In the first place, the suit should relate to a trust created for public purposes of a charitable or religious nature. In the second place, it must proceed on an allegation either of breach of trust or of the necessity of having directions from the court for the administration of trust. In the third place, the reliefs claimed must be one or other of the reliefs specified in the section and lastly, the suit must be one brought in a representative capacity in the interests of the public or of the trust itself and not for vindicating the private rights of the plaintiff (d). If these conditions are present, the suit can only be brought in conformity with the provisions of section 92 of the Civil Procedure Code. Such suit has got to be instituted by the Advocate-General and outside the Presidency towns, by the Collector or such other officer as is empowered by the Provincial Government in this respect ; or it can be instituted by two or more persons having an interest in the trust who have got the consent in writing of the Advocate-General

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(d) Ramdas V. Krishna—A.I.R. (1940) Pat. 425.

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or of the Collector or other officer mentioned above in cases outside the Presidency towns. The court competent to try such suits is the principal civil court of original jurisdiction or any other court empowered in this behalf by the Provincial Government within the local limits of whose jurisdiction the whole or any part of the subject matter of the trust is situate.

The trust must be a public trust.

The first condition necessary to bring a case within the purview of the section is the existence of a trust, whether express or constructive, for public purposes of a religious or charitable nature. A private trust is outside the operation of the section (e), which proceeds on the footing that a public trust exists. A suit merely for deciding whether a public trust exists or not is not one which the section contemplates. But although mere declarations are outside the scope of section 92, yet when reliefs contemplated by the section are claimed and such reliefs cannot be granted without the determination of the question as to whether a public trust exists or not or whether a particular property appertains to a public trust, such questions would have to be decided by the court (f). The existence of a public trust must have to be proved if it is denied by the defendant, but the mere denial of the defendant would not oust the jurisdiction of the court under section 92 of the Civil Procedure Code. The nature of the trust can be proved by evidence like any other fact.

The word "trust" has been used in the section in a general and not technical sense, and "public" means and includes a section of the public. In Vidyavaruthi V. Balusami (g) the Judicial Committee after reviewing the Hindu and Mohammedan law as to the legal position of a Mohunt, Shebait or Mutawali laid it down that none of them are trustees in the strict sense, no property being conveyed to them in trust as happens in English law ; but it was held at the same time that they were answerable as trustees in the general sense for maladministration. In Ram Prakas V. Anand (h), the Privy Council expressly held

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(e) Vide Gopal Lal V. Purna Chandra—49 I.A. 100.
(f) See Lokenath V. Abani—A.I.R. (1941) Cal. 68.
(g) 48 I.A. 302.
(h) 43 I.A. 73.

CENTRAL LIBRARY

in regard to the head of a Mutt that although large administrative powers are undoubtedly vested in the reigning Mohunt, the trust did exist and must be respected. This decision was followed by the Privy Council in the subsequent case of Basudeo Roy V. Mohunt Jugal Kishore (i) where it was held that though the property of the Asthal was granted to an individual it was burdened with an explicit and unambiguous trust and that all acquisitions with the income thereof are subject to the same trust. The head of a Mutt would certainly answer to the description of a trustee in the sense in which it is used under section 92 of the Civil Procedure Code and so also would the shebait of a temple, provided the public or a portion thereof are interested in the performance of those duties and obligations which are imposed on them in connection with the endowed properties (j). Thus to attract the operation of section 92 of the Civil Procedure Code it is not necessary that a trust should exist in the English sense of the word or that there should be two estates or two ownerships, it is enough that there is obligation annexed to the property in favour of religious or charitable objects of a public nature and the person having the custody or management of the property is legally and not merely morally bound to carry on certain duties for which he is answerable in law. (j[1]).

Constructive Trust.

The trust need not be express, it may be constructive as well. There are expressions used in some of the decided authorities which seem to suggest that a constructive trustee and a trustee *de son tort* are synonymous expressions. This view, as has been clearly pointed out by Woodroffe, J. in Budreedas V. Choonilal (k), is not strictly correct. The dispute may arise in every case as to who is the trustee in law and the defendant in a suit might purport to carry on the trust as though he was entitled to do in law though according to plaintiff he was doing it unlawfully without any title. A person who without title

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(i) A.I.R. (1918) P.C. 37, 22 C.W.N. 841.
(j) Vide Nelliappa V. Punnaivanam—50 Mad. 567 ; Monohar Ganesh V. Lakhmiram—12 Bom. 247.
(j[1]) Laxman Rao V. Gobind Rao A.I.R. (1950) Nag. 217.
(k) 33 Cal. 789.

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chooses to take upon himself the character of a trustee becomes a trustee *de son tort* and is liable to account for what he has done or what he has received while so acting in the same way as if he were a *de jure* trustee. Such person may be described as a *de facto* trustee or a trustee *de son tort* and is distinguishable from a trespasser out and out who does not purport to act as a trustee at all but claims adversely to the trust. But as has been stated by Mr. Justice Woodroffe in the case cited above, there may be a trustee *de facto* or *de son tort* both in respect of an express and a constructive trust. A constructive trust arises not by act of parties but by operation of law, as for example, when a trustee gains some personal advantage by availing himself of his position as a trustee. Thus if a lease were the subject matter of a public trust, a constructive trust would arise if the trustee renewed a lease in his own name (l). He would in such a case be deemed to be a trustee for those interested in the original term and this would be equally so if the trustee was a trustee as of right or a trustee *de son tort* ; and were there a breach of such constructive trust as by making away with the renewed lease or by not applying its profits for the purpose of the trust there would be such a breach of trust as is contemplated by the section. A suit would, therefore, lie under this section against a trustee of an express or constructive trust, whether such a trustee was so *de jure* or *de son tort* (m).

The Madras High Court in Nelliappa V. Punnaivanam (n) seems to have taken the view that Mohunts, Shebaits and Mutawalis would come under the description of constructive trustees within the meaning of section 92 of the Civil Procedure Code. This seems to be a far-fetched interpretation for which there is hardly any justification. As has been said already, the word "trust" has been used in section 92 in a general and not a restrictive sense. It connotes an obligation akin to that of a trustee in English law without any legal estate in the property which the

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(l) See Sandford V. Keech—Sel. Ca. Ch. 61.
(m) Vide Budreedas V. Choonilal—33 Cal. 789 at 806.
(n) 50 Mad. 567.

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English trustee has got. There is no reason, therefore, why a Mohunt or a shebait should not be regarded as express trustee for purposes of section 92 of the Civil Procedure Code. A constructive trust has a well known meaning in English law and its essential characteristic is that it arises by operation of law independently of the act of parties. In this sense, it is hardly appropriate to speak of a Shebait, Mohunt or Mutawali as a constructive trustee.

In the matter of constructive trust, an important distinction should be noticed between English and Indian law. If the trustee in breach of trust transfers the property to another person, and the alienee has notice of the trust, he is regarded in English law as a constructive trustee for the *cestui que trust*. He undoubtedly acquires the legal estate in the property by virtue of the transfer but as to the legal estate was annexed an equitable obligation in favour of the *cestui que trust* this obligation could be enforced against the transferee if he was either a volunteer or even if the transfer was for value he had notice of the same. Apart from the cases where a person occupying a fiduciary position makes profits taking advantage of his position as such, a constructive trust arises generally under English law, whenever a person has the legal estate but has not the complete equitable estate in him. To the extent that he lacks equitable estate, he is a constructive trustee for the person or persons who have the equitable estate (o). This doctrine of constructive trust enables the beneficiary to follow the trust property in the hands of a stranger who, though he has acquired the legal estate from the trustee, is affected with a notice of the trust. This conception, however, cannot be applied either to a Hindu religious endowment or even to a Mohammedan wakf. In law the shebait or Mohunt is a mere manager who has not the legal estate in him as in the case of an English trustee. The transferee from such persons therefore does not get the legal estate and the question whether he purchases with notice of the trust or not is really immaterial. The shebait or mohunt has

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(o) Vide Underhill's Law of Trust, 9th Edn. p. 188.

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no right to transfer the property except in certain exceptional circumstances recognised by law and the fact that the purchaser is a *bona fide* purchaser for value would afford no protection to him. An alienee of an endowed property cannot, therefore, rank as a constructive trustee in law.

This question was pointedly raised in a Calcutta case (p) which arose out of a suit instituted in relation to a wakf property under section 92 Civil Procedure Code. The allegations of the plaintiffs. in substance were that the defendant No. 1 who was a Mutawali of the wakf property transferred the same in breach of trust to defendant No. 2 and as the defendant No. 2 took possession of the same knowing full well that it was trust property, he became a constructive trustee in the eye of law and was liable to restore possession of the property to the legally appointed trustee. There was *inter alia* a prayer for removal of defendant No. 1 as Mutawali and appointment of a new Mutawali in whom the disputed property might be directed to be vested. One of the points debated in the case was whether on the allegations in the plaint the defendant No. 2 could be held to be a constructive trustee within the meaning of section 92 of the Civil Procedure Code. The question was answered in the negative : firstly on the ground that the principles of English law relating to constructive trust could not be applied to a Hindu debutter or Mahommedan wakf and secondly even if the English law applied, a purchaser of trust property with notice of the trust would be a bare trustee in English law who could not be called upon to perform any of the functions of a trust either *de jure* or *de facto*. The only right which the *cestui que trust* can assert against him is the right to follow the property in his hands. It is true that there are decided authorities in English law (q) to the effect that even persons who are not trustees might by participating in the fraud committed by trustees be regarded and made accountable as constructive trustees ; but this principle, it was pointed out, could not apply to a case where the property was treated and sold as the

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(p) Gobinda Chandra V. Abdul Majid—48 C.W.N. 225.
(q) Vide Barnes V. Addy—L.R. 9 Ch. Appeal 244.

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personal property of the Mutawali and there was nothing to show that the purchaser was guilty of fraud or collusion in the shape of bringing about a transfer of the properties in breach of trust which he knew to exist.

Public Trust.

Section 92 applies only when the religious or charitable trust is for a public purpose. As Mitter, J. observed in Nobi Shirazi V. The Province of Bengal (r), the essential distinction between a public and a private trust is, that in the former the beneficiaries are definite and ascertained individuals or who within a definite time can be definitely ascertained, but in the latter the beneficial interest must be vested in an uncertain and fluctuating body of persons —either the public at large or some considerable portion of it answering a particular description. The fact that the uncertain and fluctuating body of persons is a section of the public following a particular religious faith or is only a sect of persons of a certain religious persuasion would not make any difference in the matter and would not make the trust a private trust.

Whether the trust is public or private would have to be decided in each case with reference to the terms of the document if any ; and if there is no document or its language is ambiguous, the decision would depend upon inferences which could be legitimately drawn from the evidence adduced in the case, the material evidence being of actual user and public repute. The question at times becomes undoubtedly difficult, and although certain indicia of a public foundation have been enunciated in several decided authorities (s) yet none of them can be regarded as conclusive. The question generally arises in regard to temples. It was held by the Privy Council in Bhagwan Din V. Gir Har Saroop (t) that it is possible that a temple which was a private one at its inception might be so dealt with, that in course of years it might become a public temple. The essence of a public

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(r) I.L.R. (1942) 1 Cal. 211 at 228.
(s) Vide Thackersey V. Hurbhum—8 Bom. 432 ; Chintamon V. Dhondo—15 Bom. 612 ; Shri Dhundiraj V. Ganesh—18 Bom. 721 ; Raghubar V. Kesho—11 All. 18 ; Muthai V. Perainan—4 Mad. 228.
(t) 44 C.W.N. 294.

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foundation consists in dedication to the public and whether there has been any dedication or not must be ascertained with reference to circumstances of each individual case. In the case of Bhagwan Din V. Gir Har Saroop (t) the facts were that a person squatting on a plot of land, which did not belong to him, had set up a mud hut thereon with an idol in it and in 1781 a grant of the land was made to him personally and his heirs "generation after generation and descent after descent." The temple had grown, but the family had always treated it as private property, without any interference by the public, dividing the various forms of profit, whether offerings or rents, letting out portions of lands in their own names, closing the temple to the public when necessary for family purposes and erecting samadhs on the land in honour of the dead. Having regard to these circumstances, particularly to the fact that the original grant was in favour of an individual, it was held by the Privy Council that no public trust could be inferred, even though it was not disputed that no Hindu worshipper was ever turned away or prevented from worshipping the deity or making votive offerings to the same ; and further that the deity acquired considerable popularity in the Hindu locality.

By way of contrast, I would ask you to advert to the facts in the Privy Council case of Pujari Lakshmana Goundan V. Subramania (u). The controversy in this case was as regards the character of the temple, that is to say, whether the temple was public or private. The circumstances attending the origin of the temple were rather peculiar. It is said that the founder of the temple dreamed that he should instal at his house at Kalipatta an idol of the God Subramanya Swami and that the god would come to his house and enable him to foretell events. He did instal that idol at his house and allowed Brahmins and other Hindus of various castes to worship the idol as if it was a public idol. He acted as the Pujari of the idol and received, as such, offerings made to the idol by worshippers and fees which he charged in respect of

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(t) 44 C.W.N. 294.
(u) 29 C.W.N. 112.

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processions and other religious services. The number of worshippers increased and with the offerings and fees he purchased some jewels for the idol, built for himself another house in the village to which he and his family removed and he extended the house in which the idol was and added to it covered rooms for the accommodation of the worshippers during the ceremonies of worship. He also built in the village a rest house for the use of worshippers of the idol. With the income which he derived from offerings and fees, he efficiently maintained the temple as if it were a public temple and discharged all the expenses connected with the temple and the worship of the idol there. In these circumstances, it was held by the Judicial Committee that no other inference was possible than that the founder dedicated the temple to the public.

I have dealt with some of the characteristic features of a public temple in an earlier lecture and it is not necessary to repeat these discussions here. While weighing and appraising the value of evidence that is adduced in regard to the presence or absence of certain features in particular cases, it would be worthwhile to bear in mind a weighty observation made by Wallace, J. in a Madras case (v). "If the feature emphasised" thus observed the learned Judge, "is a general characteristic of a public temple or of a private temple then it must bear in its own character some indicia of its public or private nature and in that case these indicia and not the fact that they appear in other temples are the real indicia of the nature of the temple in which they appear." It was held in that case that where all castes of the Hindu public for centuries have been freely using a temple and have never been debarred from using it, and there is no evidence that they did so with permission, it would require strong evidence to persuade a court to hold that the temple is nevertheless intended for the use of one isolated caste or Tarward or family.

There is a well recognised custom of feeding the poor in connection with religious ceremonies and worship of the idol, and there may be an arrangement

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(v) Vide V. K. Kelu V. C. S. Sivaram—A.I.R. 1928 Mad. 879.

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for feeding the poor even in a private debutter ; but where a Dharamsala was attached to a temple which is open to the public and the direction of the founder was to apply the surplus money that was not required for services of the temple towards feeding the travellers and maintaining a Sadavart, the circumstances were held sufficient to lead to the conclusion that the trust was for a public purpose of religious or charitable character (w). In Mahant Puran V. Darshandas (x) it was proved by evidence that certain property had been held for many generations for the purpose of supporting and maintaining Fakirs, entertaining visitors and for the giving of alms and there was no evidence of the income being used for any other purpose. It was held that the court ought to presume the existence of a charitable or religious trust of a public character and that the institution did not lose its public character for the simple reason that its object was to maintain Fakirs of a particular sect and the propagation of the tenets of that sect. As has been said already, all mutts are not necessarily public and a mutt that is otherwise private, does not become public because some persons are fed on the occasion of the Guru Puja or a water pandal is maintained for supplying drinking water to thirsty pilgrims during the hot season (y).

Whether sec. 92 applies when trust is both public and private.

It happens frequently that a trust created is of an ambiguous character, that is to say its purpose is partly private and partly public. Difficulties arise in such cases regarding the applicability of section 92 of the Civil Procedure Code. Opinion has been expressed in a Calcutta case that to find out whether a trust is a public trust of a charitable or religious nature contemplated by section 92 of the Civil Procedure Code, the court must look to the real substance of the trust and the primary intention of the creator of the trust. The mere fact that there are certain provisions in favour of private individuals along with some other in favour of the public, in a particular case will not take the case out of the provision of section 92 of the Civil

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(w) Vide Jugal Kishore V. Lakshmandas—23 Bom. 659.
(x) 34 All. 468.
(y) Sethappayyar V. Periasami—14 Mad. 1.

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Procedure Code (z). This case related to a wakf estate, the net annual income of which was about Rs. 1300/- and out of this a sum of Rs. 353/- was set apart for public purposes of a charitable or religious nature. It was held by the learned Judges that the amount by no means was a trifling or a disproportionate provision in favour of the public and consequently the suit was maintainable under section 92 of the Civil Procedure Code. Reliance was placed by the court in support of its decision upon the pronouncement of the Judicial Committee in Vaidya Nath Aiyyar V. K. Swaminatha (a) where the founder of the trust directed by his will that two-thirds of the income of his property would go to his wife and the remaining one-third would go first towards the discharge of certain debts and thereafter to establish a Chatram for the feeding of the poor. There was a further provision that after the wife's death, two-thirds of the income given to her would be applied to charity and one-third to the members of the family. On these facts the Judicial Committee agreed with the findings of the court below that the Chatram so established was a public trust. The decision of the Calcutta High Court was commented upon by Mr. Justice Amir Ali of the same court in Abdul Halim V. Musst. Nasibunnessa (b); and it was observed by the learned Judge that the true test for determining whether a trust is public or not is not merely a calculation of what goes to one object or to the other.

It should be noted that the suit contemplated by section 92 proceeds on the allegation of a breach of public trust or is founded upon the necessity of having directions from the court regarding the administration of such trust. A trust may be partly private and partly public but in order to attract the operation of section 92, it is essential that a breach of public trust should be alleged. To determine, therefore, whether a case comes within the purview of section 92 or not it is necessary to see precisely what allegations are made in the plaint. If what is complained of relates entirely to the private part of the trust and

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(z) See S. Massirat Hossain V. Hossain Ahmed—42 C.W.N. 345.
(a) 29 C.W.N. 154, 51 I.A. 282.
(b) 44 C.W.N. 969.

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has nothing to do with the portion which concerns the public, section 92 would obviously have no application (c). On the other hand, if the grievance of the plaintiff is that the public trust has not been properly carried out or there is misfeasance or neglect of duty in respect of the same, the suit would have to be framed in conformity with the provision of section 92 of the Civil Procedure Code. In a case decided by the Judicial Commissioners of Sind (d) a portion of a property was allotted for the benefit of the poor members of the Kachi Lohana community and the rest was devoted to other purposes ; a suit was instituted in respect of the property without taking the sanction of the Advocate-General. It was held that the suit would fail for non-compliance with the provisions of section 92 of the Civil Procedure Code, even though the property allotted to charity constituted a small portion of the trust property in respect of which the suit was instituted. The correctness of the decision is open to doubt, though it may perhaps be justified on the ground that the suit as it was framed was of a comprehensive character and the reliefs claimed related both to public as well as to private trust and were not divisible. If it is possible to separate the two parts of the trust, the proper procedure should be to confine the suit under section 92 to the public trust alone.

Suit under sec. 92 must be on ground of breach of trust or necessity of having directions from the court.

The second condition which is to be fulfilled in order that a suit may come within the purview of section 92 Civil Procedure Code is that it should be instituted on the ground that there has been a breach of trust or that directions from the court are necessary for administration of the trust. In English law any act or neglect on the part of a trustee which is not authorised or excused by the terms of the trust instrument or by law is called a breach of trust (e). The word "trust," as has been said already, has been used in a general sense in section 92 and connotes an obligation or duty attaching to a person in charge of properties dedicated to religious or charitable purposes which could be enforced either in law or in equity.

(c) Vide I.E. Aboo V. G.H.S. Aboo—A.I.R. 1939 Rangoon 254.
(d) Vide Vishram Manji V. Gangaram—A.I.R. 1939 Sind 13.
(e) Vide Underhill—Law of Trust p. 2.

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What has got to be alleged under section 92 Civil Procedure Code is a breach of such obligation or duty.

An allegation of a breach of trust undoubtedly presupposes the existence of a trust but it is not necessary that the trust should be admitted by the defendant. The defendant can certainly deny the existence of the trust but such denial would not oust the court of its jurisdiction under section 92 Civil Procedure Code. If that were so, then every case of public charity might be excluded from the jurisdiction of the court by a bare denial on the part of the defendant that any public trust exists. The existence of a public trust is a jurisdictional fact which has got to be determined by the court itself like any other disputed fact upon the evidence that might be adduced by the parties (f). A suit under section 92 would lie even without any allegation of a breach of trust if it is necessary according to the case of the plaintiff to have directions from the court regarding the administration of the trust. The directions as Mr. Justice Woodroffe pointed out in the Budreedas V. Choonilal (g) are such directions as are necessary for the carrying out of the trust and as are given to a trustee where there is one or a new trustee where one is to be appointed. The nature of the reliefs expressly mentioned in the section gives a clear indication as to what these directions are. Thus a settlement of scheme would be a proper direction under section 92 of the Civil Procedure Code (h).

Whether strangers to the trust could be made parties to a suit under section 92 C. P. Code.

An allegation of breach of trust can be made only against persons who, according to the plaintiff, occupies the position of a trustee either *de jure* or *de facto* and is answerable as such. Of course, the defendant may deny that he is guilty of any breach of trust or even that any trust exists at all. Such denial as stated already would not take the case out of the scope of the section. But such cases must be distinguished from those where according to the plaintiff the defendant is a stranger to the trust and claims adversely to it. The question has been raised in vari-

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(f) Vide Budh Singh V. Nirod Baran—2 C.L.J. 431 ; Jaffar Khan V. Daud Saha—13 Bom. L.R. 49.
(g) 33 Cal. 789 at p. 809.
(h) Vide Abdul Alim V. Abir Jan—55 Cal. 1284.

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ous cases as to whether an alienee of trust property from the trustee can be impleaded as a party defendant in a suit under section 92 of the Civil Procedure Code or any relief can be claimed against him under that section. The view taken by the High Courts in India seems to be that if the essence of the plaintiff's claim against such alienee is that he is a trespasser and that the properties, of which he is in possession, should be restored to the new trustee that is to be appointed by the court, such relief is outside the scope of section 92 of the Civil Procedure Code (i). On this point there is unanimity of opinion amongst the different High Courts in India ; difference however exists on the question as to whether such person is a proper or necessary party to a suit under section 92 of the Civil Procedure Code.

The Calcutta High Court has consistently taken the view in a long series of cases that it is not competent to the court to implead the alienee of a trust property as a party defendant in a suit under section 92 Civil Procedure Code (j). The main ground underlying these decisions is, that a relief by way of ejectment of a trespasser or recovery of possession of trust property from the hands of a person to whom it has been improperly alienated by the trustee cannot be brought within any of the specific clauses of section 92 of the Civil Procedure Code. It is also pointed out that a suit under section 92 is started by persons who are not *prima facie* entitled to possession themselves. So long as the old trustee is not removed, the property remains vested in him and it is only when a new trustee is appointed that he can bring a suit for possession against a trespasser. These propositions hardly admit of any doubt and in fact all the High Courts in India concur in holding that no relief by way of ejectment can be claimed in a suit under section 92 of the Civil Procedure Code. The view that is taken by some of the other High Courts, however, is that if the ground upon which a trustee is sought to be removed is im-

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(i) Vide the observation of Mukherjea, J. in Gobinda Chandra V. Abdul Majid—48 C.W.N. 225, 235.

(j) Vide Budh Singh V. Nirad Baran—2 C.L.J. 431 ; Budreedas V. Choonilal—33 Cal. 789 ; Golam Mowlah V. Mollah Ali Hafiz —28 C.L.J. 4 ; Faizunnessa V. Asad—41 C.W.N. 298 ; Massirat Hossain V. Hossain Ahmed—42 C.W.N. 345.

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proper alienation by him of trust property, the alienee is undoubtedly a person interested in the determination of that question and in that sense he can be a proper party to a suit under section 92. It was held in Budh Singh V. Nirad Baran (k) that such suit would be open to the charge of misjoinder of parties if two different claims, one against the trustee and the other against the transferee, are joined in one and the same suit. Such procedure, it is said, is not warranted by Order 1 Rule 3 Civil Procedure Code, and the suit cannot but be complicated by reason of the special defence which each defendant might set up.

The point is certainly not free from doubt. In Ghazaffar Hussain V. Yawar Husain (l), Stanley, C. J. expressed the view that the impropriety of alienation of the trust property can be adjudicated upon in the presence of the alienee if he is made party to the suit. If, however, the alienee does not accept the finding arrived at in such suit, then it may be necessary for the new trustee to institute a fresh suit for recovery of possession of the property. In a later decision of the same High Court it has been held by Sulaiman and Daniels, JJ. (m) that where in a suit, instituted according to the provisions of section 92 of the Civil Procedure Code, it is found that the persons named as defendants are trespassers having no claim to be considered as trustees of any sort, it is still the duty of the court to go on with the suit and if it finds that the property in suit is trust property, it can appoint new trustees though it cannot pass a decree for ejecment against the defendants.

The question was raised before the Madras High Court in Assam Raghuvala V. Pellati (n). Wallis, O. C. J. in his judgment approved of the view taken by the Calcutta High Court, but added that if an alienee desires to be made a party, an order adding him a party might properly be made. Sheshagiri, J. was however of opinion that a trespasser, though not a necessary was yet a proper party and the question regarding validity of the alienation should be decided

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(k) 2 C.L.J. 431.
(l) 28 All. 112.
(m) Vide Lachman Prasad V. Munia—47 All. 867.
(n) 27 Mad. L.J. 266, 25 I.C. 794.

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in his presence. Two reasons were put forward by the learned Judge in support of this view. In the first place, it was said that the presence of the alienee would enable the court to give a proper decision regarding the legality of the transfer as the alienating trustee might not have any interest in contesting the suit. In the second place, it was pointed out that such a course would avoid a conflict of decisions. If may happen that the trustee is removed on the ground that he has made an improper alienation of trust property, while it is quite possible that in the subsequent suit against the transferee the decision is given that the transfer was lawful. The learned Judge did not go to the length of saying that decision in section 92 suit would operate as a *res judicata* in the subsequent litigation, though according to him it would be a strong piece of evidence against the transferee. In C. N. Eralappa V. Balakrishnia (o), opinion was expressed that a person who professes to derive his rights from a trustee and sets up a title hostile to the trust can be impleaded as a defendant in a suit under section 92 Civil Procedure Code though no decree for possession can be passed against him. It was said, that for the purpose of obtaining suitable directions from the court regarding the administration of the trust, it was quite proper to implead a stranger as a party to such suit and reliance was placed in this connection upon the opinion expressed by Devodoss, J. in Venkatanarasimha V. Subba Rao (p). "Supposing", thus observes the learned Judge, "there is in a village an ancient temple which has had no trustees within living memory ; supposing also that you cannot trace either the founder or his heirs ; the temple is in a neglected condition and I take it that some neighbour has annexed it to his own private property ; in such a case what is to be the procedure? If it is to be held that you cannot file a suit under section 92 against the trespasser, the question naturally arises who is to be impleaded as a defendant to such a suit ? Is it suggested that you may take at random any chance worshippers and file a suit

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(o) 53 Mad. L.J. 183, 102 I.C. 74.
(p) 46 Mad. 300.

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against them ? Such a suit would be a farce and what purpose would be gained on such a suit being filed ? If a suit cannot be filed under section 92, a scheme cannot be made and new trustees cannot be got appointed. If it is on the other hand to be held that a suit has straightaway to be filed in the ordinary way against the trespasser, the question is who is to file such suit—there being no one competent to claim possession—as on my assumption there were no trustees to start with nor have any new trustees been appointed." Undoubtedly there is considerable force in these observations. The question was again discussed by the Madras High Court in a later case (q) and Varadachariar, J., who delivered the judgment, made a distinction between an absolute stranger to a trust property and one who has come into possession through or in the right of a settlor or trustee. Even if the latter denies the trust or claims adversely to it, he can, it was held, quite properly be made a party defendant in a suit under section 92. The learned Judge further pointed out that the rules relating to joinder of parties are based on principles of avoiding multiplicity of suits not merely as involving waste of time and money but also possible conflict of decisions. It is not necessary to justify the addition of a defendant that he should be interested in all reliefs or questions arising between the plaintiff and the other defendants.

The Bombay High Court has held (r) that when a breach of trust is complained of and where the alienee denies that the property is a public trust for religious purpose, he does not cease to be a proper or necessary party because no relief by way of eviction can be given against him. It is true that a decree for possession is not one of the reliefs that could be granted under the section, but the court has jurisdiction to determine for the purpose of the reliefs which can be granted whether there is a public trust for religious or charitable purpose and whether the trustee is guilty of breach of trust.

(q) Vide Anjaneya Sastri V. Kothandapani—A.I.R. 1936 Mad. 449.
(r) Vide Collector of Poona V. Bai Chanchal Bai—35 Bom. 470.

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The Judicial Committee in Abdur Rahim V. Md. Barkat Ali (s) adverted to this difference of opinion on this point existing amongst the High Courts in India without expressing their own views as to the propriety or otherwise of any of the opinions. Their Lordships were content to affirm only the proposition of law that no relief against third parties by way of ejectment or otherwise could be included in the residuary clause which is clause (h) of the section.

It seems that it would be quite a correct view to take that the plaintiffs in a suit under section 92 of the Civil Procedure Code are not bound to implead the alienee of the trust property as a party defendant ; at the same time the addition of such a person as a party would not necessarily be fatal to the suit. An alienee may certainly be interested in one of the main questions raised in the suit and if there is no relief claimed by way of ejectment against him, it is difficult to say why there should be any misjoinder of parties and causes of action. It is certainly not possible to say that the decision in section 92 suit would operate as *res judicata* on the question of the validity of alienation in a subsequent suit for ejectment that might be brought against the transferee ; but if the transferee himself at his own instance was added as a party defendant, it may be argued that the rule of *res judicata* would bind him.

Section 92 limited to suits for reliefs specified in the section.

The third requirement of section 92 Civil Procedure Code is that the reliefs claimed by the plaintiff must be covered by one or other of the clauses attached to sub-section (1) of the section. It was clearly laid down by the Judicial Committee in Abdur Rahim V. Md. Barkat Ali (t) that suits founded upon any breach of trust for public purposes of a charitable or religious nature do not require to be brought in accordance with the provisions of section 92 Civil Procedure Code unless the reliefs sought fall within clauses (a) to (h) of sub-section (1). It was held further that the words "further or other relief" in clause (h) must, on general principles of construction, be taken to mean relief of the same nature as clauses (a) to

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(s) 55 I.A. 96, 32 C.W.N. 482.
(t) 55 I.A. 96, 32 C.W.N. 482.

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(g) and that the opposite construction would cut down substantive rights which existed prior to the enactment of the Code of 1908 when sub-section (2) was first introduced. "It is unlikely" said their Lordships "that in a Code regulating procedure the legisture intended without express words to abolish or extinguish substantive rights of an important nature which admittedly existed at that time (u).

How clause (h) of sub-section (1) is to be construed in accordance with the *ejusdem generis* doctrine was fully explained by the learned Judges of the Calcutta High Court in the case of Nabi Shirazi V. The Province of Bengal (v). The *ejusdem generis* doctrine means that "where general words immediately follow or are closely associated with specific words, their meaning must be limited by reference to the preceding words" (w). For the purpose of deciding as to whether a particular case comes within clause (h) of sub-section (1) we are to see whether the relief claimed is similar in character to any of those specified in clauses (a) to (g). A relief against a third party is obviously of a dissimilar nature and cannot be covered by clause (h). (x).

If the relief claimed is similar to any of those enumerated in clauses (a) to (g), it is not necessary that it must be claimed as an additional relief in the sense of being additional to some other relief also prayed for, which are covered by any of the clauses (a) to (g). A suit under section 92 may be exclusively for relief which is contemplated by clause (h) and if so, it would be equally controlled by sub-section (2) of the section (y).

It has been held that even if the prayers made in the plaint do not follow the express language of the various clauses of sub-section (1), yet if impliedly or substantially they claim the identical reliefs, the operation of section 92 Civil Procedure Code would be

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(u) Vide the observations of Khundkar, J. in Nabi Shirazi V. The Province of Bengal—(1942) 1 Cal. 211 at 221.
(v) I.L.R. (1942) 1 Cal. 211.
(w) Per Lopes, L.J. in Smelting Company of Australia V. Commissioner of Inland Revenue—(1897) I.Q. B. 175, 181.
(x) Vide Abdur Rahim V. Md. Barkat—55 I.A. 96.
(y) Nabi Shirazi V. The Province of Bengal—(1942) 1 Cal. 211.

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attracted. In Jambulinga V. Akilanda (z) there was no express prayer for removal of the defendant who was the existing trustee ; but in substance the object of the suit was to get the defendant dismissed and to have new trustees appointed by the committee recognised by the court. It was held that in these circumstances the suit came within section 92 Civil Procedure Code.

A question sometimes arises as to whether a suit is maintainable under section 92 Civil Procedure Code, if some of the reliefs claimed by the plaintiff are appropriate to a suit under that section while others are not. The procedure to be followed in such cases was indicated by the Allahabad High Court in Ramrup Goshain V. Ramdhari (a). It was held that when some of the reliefs claimed in a suit under section 92 are reliefs which a court is competent to grant in such a suit and others are not, it is not a correct procedure to return the plaint for presentation to the proper court, but the Judge should either call upon the plaintiff to amend his plaint by striking out the reliefs which are not appropriate to the suit in question or should wait until judgment is delivered and then dismiss the claims relating to such reliefs. If, however, the reliefs claimed are of a subsidiary character and are really involved in or form the basis of the primary reliefs which are in accordance with the clauses of the section, it would not affect either the character or the maintainability of the suit. Thus a declaration that an alienation is improper may be ancillary or incidental to the prayer for removal of the trustee. When the suit is substantially one for obtaining reliefs under section 92 Civil Procedure Code, the requirements of the section cannot be avoided by casting the prayers in pure declaratory form under the Specific Relief Act (b).

Suit under sec. 92 is a representative suit on behalf of the public.

The fact that a suit relates to public trust of a religious or charitable nature and that the reliefs claimed fall within clauses (a) to (h) of sub-section (1) of section 92 would not by themselves attract the operation of the section, unless the suit is of a repre-

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(z) A.I.R. 1927 Mad. 886.
(a) 47 All. 770.
(b) Mufti Ali Jafar V. Fazul—44 All. 622.

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sentative character instituted in the interests of the public and not merely for vindication of the individual or personal rights of the plaintiff. This is apparent from the history of the legislation on the subject and the evils which the legislation wanted to remedy. As was said by Woodroffe, J. in Budreedas V. Choonilal (c), "it is obvious that the Advocate-General, Collector or other public officer can and do sue only as representing the public, and if, instead of these officers, two or more persons having an interest in the trust sue with their consent, they sue under a warrant to represent the public as the objects of the trust. It follows from this, that when a person or persons sue not to establish the general rights of the public, of which they are a member or members, but to remedy a particular infringement of their own individual right, the suit is not within or need not be brought under the section." In this case the plaintiff instituted a suit primarily for a declaration that he was the legally appointed manager and trustee of a Jain temple situated at 139, Cotton Street, Calcutta, being appointed by the Shree Sung which had the legal authority to make the appointment and that the defendant had no authority to act as shebait or manager. There was a prayer also for a direction on the defendant to make over possession of the temple and its properties to the plaintiff. An application was made by the defendant for dismissal of the suit on the ground that the suit being one contemplated by section 539 of the Civil Procedure Code (which corresponds to section 92 of the present Code) was not maintainable without the consent of the Advocate-General. This application was rejected and it was held by Woodroffe, J. that section 539 of the Civil Procedure Code was no bar to a suit of this description.

One of the points decided by the learned Judge holding, that the provision of section 539 Civil Procedure Code was not mandatory but merely permissive, is no longer good law since the introduction of subsection (2) of section 92 in the Code of 1908 ; but the other part of the judgment is perfectly sound, viz., that to bring a case within the purview of section 539

(c) 33 Cal. 789 at 807.

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the suit must be a representative suit brought for the benefit of the public and to enforce a public right in respect of an express or constructive trust of a charitable or religious nature. As the suit was instituted for the purpose of enforcing the personal rights of the plaintiff as regards the trusteeship of the temple, it was held to be outside the purview of section 539. This principle was accepted as sound by a Full Bench of the Madras High Court in Appanna V. Narasinga (d). This was a suit by a trustee of a public religious trust against a co-trustee for accounts and the Full Bench decided that it did not come within section 92 of the Civil Procedure Code, the claim being to enforce a purely personal right of the plaintiff as a trustee against his co-trustees. Kumarswami Shastri, J., who was one of the Judges constituting the Full Bench, observed in course of his judgment as follows :—

"Co-trustees are co-owners of trust properties and are in law entitled to be in joint possession of all trust properties whether it be in the form of immovables, movables, or cash. It would ordinarily render a trustee personally liable if he allowed the cash or movables to be in the exclusive possession and management of a co-trustee and there was misappropriation. He is in law entitled to be in joint possession of the funds, even when the other trustee is carrying out the trust properly. Where moneys are in a co-trustee's hands an account would be necessary to ascertain his liability and the claim would, in a sense, be a suit for an account of trust moneys. I find it difficult to see why if a suit by a trustee against his co-trustees or strangers for joint or exclusive possession of immovable or movable properties does not require sanction of the Advocate-General or the joinder of another person, the mere fact that money is claimed, to ascertain which an account will have to be taken, should fall under section 92."

It is interesting to note that in a subsequent Full Bench case of the same High Court the learned Judges went back upon the view expressed in this case and held that the question as to whether a suit

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(d) 45 Mad. 113.

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falls within section 92 depends not upon the character in which the plaintiff sues but upon the reliefs claimed (e). In this case, the defendant was sued as a trustee of a fund established for meeting the expenses of a public worship and other duties including the carrying out of repairs to the temple.. The plaintiff was the idol represented by the Kariasthan. The defendant had refused to pay over to the plaintiff the money which had been collected for these expenses and this led to the institution of the suit in which claim was made for recovery of money on taking of accounts. It was held that section 92 applied and the sanction of the Advocate General was necessary. In arriving at this decision the learned Judges placed considerable reliance upon certain observations of the Judicial Committee in Abdur Rahim V. Barkat Ali (f). The propriety of this view was questioned by Varadachariar, J. in Shanmukham V. Gobinda (g), and it was finally reversed by a larger Full Bench in Tirumalai V. Udiavar (h). In this third Full Bench case, the trustees of a certain temple who *qua* trustees had the right of recovering from the trustees of another temple moneys which the latter had collected on behalf of the former temple, filed a suit against the latter to compel them to render an account of the receipts and to deliver them to the plaintiffs. It was held that the right to recover these collections was entirely independent of section 92 and no sanction of the Advocate General was necessary for the institution of the suit. Leach, C. J., who delivered the judgment of the court observed as follows :—

"In deciding whether a suit falls within section 92 of the Civil Procedure Code the court must go beyond the reliefs and have regard to the capacity in which plaintiffs are suing and the purpose for which the suit is brought. The judgment of the Privy Council in 55 Calcutta 519 lends no support for the opinion expressed by the Full Bench in 58 Madras 988."

(e) Janaki Bai V. Shri Tiruchitrambala—58 Mad. 988.
(f) 55 Cal. 519, 55 I.A. 96.
(g) A.I.R. 1938 Mad. 92.
(h) A.I.R. 1943 Mad. 466.

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Thus the Madras High Court takes the identical view as the Calcutta High Court did in Budreedas's case (i). Agreeably to this principle, a Division Bench of the Calcutta High Court has held recently that a suit by the present trustees of a charitable trust against past trustees for accounts does not come under section 92 Civil Procedure Code (j).

Where the suit though it relates to a public religious and charitable trust is for vindication of the personal right of the plaintiff and there is no prayer in terms of any of the clauses of section 92, the Bombay High Court has held that such suits are not hit by section 92. Thus a suit by the trustees of a fire temple for vindication of their rights of management, which were obstructed by the defendant, has been decided not to come under section 92 (k). A different view however is taken when the reliefs claimed fall within the specific clauses of section 92. Thus in Chhaganlal V. Sobharam (l) a suit was instituted by a co-sharer for declaration that he was the owner of a share in the income derived from a public temple and there was a claim for injunction permanently restraining his co-sharers from obstructing him in the enjoyment of his right and receiving the perquisites according to his turn and for recovering the loss consequent upon his being deprived of his turn. It was held that the suit came under section 92 Civil Procedure Code as the prayers in the plaint implied the removal of the existing Pujari and the appointment of the plaintiff himself as Pujari in his place. Stress was thus laid upon the reliefs claimed and not upon the character in which the plaintiff instituted the suit. A doubt seems also to have been expressed by Weir, J. in an Allahabad case (m) as to whether in view of the observations of the Judicial Committee in Abdur Rahim V. Barkat Ali (n) the distinction between the enforcement of public

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(i) 33 Cal. 789.
(j) See Indu Bhusan V. Kiran Chandra—A.I.R. 1940 Cal. 376, 44 C.W.N. 327.
(k) See Navroji V. Dastur—28 Bom. 20 ; see also Dinshaw V. Jamshet Ji—33 Bom. 529.
(l) 35 Bom. L.R. 1119, A.I.R. 1934 Bom. 26.
(m) Vide Md. Shafiq V. Md. Mujtaba—51 All. 30.
(n) 55 I.A. 96.

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and private rights can be maintained where the relief sought is one of the kinds enumerated in section 92 Civil Procedure Code. It was, however, an *obiter dictum* and neither in the Bombay nor in the Allahabad case were the Madras decisions adverted to or discussed.

The above conditions being fulfilled, a suit can be instituted only in conformity with the provisions of section 92 Civil Procedure Code. The section provides that such suit can be brought either by the Advocate General or by two or more persons having an interest in the trust after obtaining consent in writing of the Advocate General. Under section 93 of the Civil Procedure Code the powers conferred on the Advocate General may be exercised outside the Presidency towns by the Collector or such other officer as the Provincial Government may appoint in this behalf. Thus when the Advocate General himself does not figure as the plaintiff, the suit has got to be instituted by two or more persons who must be interested in the trust and must have obtained the consent in writing of the Advocate General as a necessary condition of the filing of the suit.

"Interest"--what it means ? Have worshippers an interest within the meaning of the section ?

When section 539 was first introduced in the Code of 1877, the words used were "direct interest in the trust", and the same words were retained in the Code of 1882. Apparently these words were taken from the judgment of Lord Eldon in In Re Bedford Charity (o). There was some conflict of judicial opinion in the several High Courts in India as to the exact scope and meaning of the expression "direct interest." It was held by the Calcutta High Court in Jan Ali V. Ram Nath (p) that a mere worshipper as such had not any direct interest within the meaning of the section and therefore two or more worshippers could not bring a suit under section 539 of the Code as it then stood. This decision was followed by the Madras High Court which went to the length of holding that even the right of management or of partaking the food offerings of a temple did not give a person a direct interest within the meaning of section 539 (q).

(o) 2 Swan. 518.
(p) 8 Cal. 32.
(q) See Narasimha V. Ayyan—12 Mad. 157.

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On the other hand, a wider interpretation was put upon these words by the Bombay and Allahabad High Courts. In Chintamon V. Dhonde (r) Sergeant, C. J. and N. Haridas, J. expressed their dissent from Jan Ali V. Ram Nath (p) and held that the legislature did not intend by the expression "direct interest" an interest of a different nature from that which the worshippers and devotees of a deity naturally have in the proper management of the temple. That was also the view of West and Birdwood, JJ. in Monohar Ganesh V. Lakhmiram (s). It was at this stage that the legislature intervened and the word "direct" was dropped by the Amending Act VII of 1888. The amendment has undoubtedly widened the class of persons competent to institute suits under section 92 Civil Procedure Code. The effect of the amendment was considered by the Calcutta High Court in Sajedur V. Gour Mohun (t) and it was held that under the amended section a person having a right of attendance and worship at a temple or a mosque had thereby an interest within the meaning of section 539. The question was considered by the Madras High Court in a Letters Patent Appeal which arose out of difference of opinion between Wallis, C. J. and Kumarswamy Shastri, J. (u). In that case two Hindus, one residing at Madras and the other at Tellicherry, instituted a suit in the district of North Malabar under section 92 Civil Procedure Code in respect of a Hindu temple situated in Tellicherry in North Malabar, and it appeared that the plaintiff, who resided at Madras, had gone to worship in the temple only on one or two occasions in the past and he relied on his right as a Hindu to worship in the temple as entitling him to institute the suit. It was held by the Letters Patent Bench (Abdur Rahim, J. dissenting) that although as a Hindu he might have a right of worship in the temple he had not, on that ground alone, the interest required by section 92 Civil Procedure Code to maintain the suit. The majority opinion proceeded on the footing that though the interest may not be direct, it

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(r) 15 Bom. 612.
(s) 12 Bom. 247 ; see also Raghubir Dial V. Kesho—11 All. 18.
(t) 24 Cal. 418.
(u) Vide Ram Chandra V. Parameswaran—42 Mad. 360.

CENTRAL LIBRARY

must be an existing and real interest not a sentimental or contingent one. Theoretically every Hindu has a right to worship in a Hindu temple in any part of India. But it would be absurd if two Hindus residing say at Peshawar can be said to have an interest in a temple in Malabar by virtue of being merely Hindus with the right of worship in that temple, if they should ever find themselves in its vicinity. To constitute an interest something more tangible and material than this contingent right was necessary.

The Lahore High Court in one of its earlier decisions dissented from the view of the Madras High Court and preferred to adopt the dissenting judgment of Abdur Rahim, J. (v); but later on it changed its views presumably because the opinion of Wallis, C. J. in the Letters Patent Appeal of the Madras High Court got the approval of the Judicial Committee (w). The Privy Council in Vaidya Nath V. Swaminath (x) expressly referred to the decision in Ram Chandra V. Parameswaran (y) and they agreed with Sir John Wallis, C. J. that the bare possibility however remote that a Hindu might desire to resort to a particular temple gives him an interest in the trust, appears to defeat the object with which the legislature used these words in the section. The law, therefore, could be taken to be fairly settled that the mere possibility that a Hindu in a certain contingency might visit a temple which *ex hypothesi* is dedicated to the use of Hindus would not give him sufficient interest to enable him to maintain a suit under section 92 Civil Procedure Code. The position, however, may be different when it is something more than a mere possibility, namely, when a Hindu is a resident of the particular locality where the temple is situated and takes part in its ceremonies or otherwise derives benefit from it.

In a later case (z) it is decided by the Madras High Court that persons belonging to neighbouring villages who attend the suit temple on important

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(v) Vide Narinjan Singh V. Kripal—5 Lah. 455.
(w) Kripa Singh V. Ajaipal—11 Lah. 142.
(x) 51 I.A. 282.
(y) 42 Mad. 360.
(z) See Narasimha V. Achuthana—A.I.R. 1926 Mad. 267, 91 I.C. 924.

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occasions and also celebrate their marriages at that temple are persons having interest in the temple trust within the meaning of section 92. The interest, as was observed by one of the learned Judges, must be real not remote, must be substantial and not illusory and it must be an existing interest and not a contingent one. The mere fact that a man is a Hindu and therefore must have some interest in a Hindu temple along with millions of his countrymen who profess the same religion, would not be enough. He must have some interest over and above that. Residence in the place where the temple is situated is certainly a material piece of evidence to establish the existence of interest ; for those who live near the institution are likely to have advantage of its benefits ; but the test of locality is only to be applied in relation to actual user of temple by those who reside close to it. The question is one of fact and must have to be decided in reference to the circumstances of each individual case (a). A person who has contributed to the funds of the temple and is a worshipper at the shrine has sufficient interest to be a plaintiff in sec. 92 suit (b).

In the case of Shailajanand V. Umeshanand (c) which related to the celebrated Vaidyanath Temple, it was held that persons, who are officiating priests of the temple and are maintained out of its income as also those who act as Pandas or guides and priests to the pilgrims, have interest in the trust within the meaning of section 539 of the old Civil Procedure Code.

The founder or its representative or descendants are certainly to be regarded as persons having interest in the endowment. In Vaidyanath V. Swaminath (d) the respondents were descendants in female lines of the founder of a Hindu '*Chatram*' founded by a deceased Hindu. The evidence showed that the Chatram was a public charity. It was held that the respondents were persons having interest under section 92 Civil Procedure Code even though they might not have

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(a) See Md. Khan Sahib V. Kadar—A.I.R. 1926 Mad. 466, 92 I.C. 950.
(b) See Ramaswami V. Muthukaruppan—A.I.R. 1925 Mad. 1011.
(c) 2 C.L.J. 460.
(d) 51 I.A. 282.

CENTRAL LIBRARY

used the Chatram at all. Disciples of the same sect to which the founder of a religious institution belonged may come in as persons interested.

Consent of the Advocate General.

The other formality that has got to be fulfilled in a suit under section 92 Civil Procedure Code is that the persons suing should get the consent of the Advocate General in writing. This consent is a condition precedent to the institution of the suit. It must be a specific consent to two or more named persons. A permission given to one applicant by name "and another" is not sufficient complicance with the terms of the section (e), nor can the Advocate General in giving consent to one give him authority to join the other persons as he chooses (f). The suit instituted must conform to the consent. If consent has been given to three persons, two of them cannot sue. The consent, however, is a condition of the institution of the suit and has no reference to the subsequent stages of the suit. Once the suit is validly instituted, it is subject to all the incidents affecting suits in general and representative suits in particular (g). If three persons, by whom consent was obtained, instituted the suit and two of them subsequently died the suit would not become defective. Again, all the plaintiffs, who file the suit, need not join in filing the appeal if the decision of the trial court is adverse to them. The appeal filed by some of the plaintiffs would be quite competent (h).

A question sometimes arises as to whether after a suit is properly instituted, a fresh consent would be necessary if the plaint is sought to be amended and a new party added as a defendant to the suit. In Abdul V. Cassum (i), it was held by the Bombay High Court that where a new defendant was added and certain additional reliefs were prayed for against him, a fresh consent would be necessary. The question, it seems, would depend in each case upon the nature of the amendment which is sought to be made. If the amendment of the plaint or the addition of a party

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(e) See Gopal V. Kanno—26 All. 162.
(f) See Amar Das V. Harmanbhai—A.I.R. 1942 Bom. 291.
(g) See Ali Begum V. Badr-ul-Islam—A.I.R. 1938 P.C. 184.
(h) Ibid.
(i) 36 Bom. 168.

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does not alter the nature of the claim in the suit, a fresh consent would be required, but where such amendment or addition of party does change the nature or scope of the suit, a fresh sanction could not be avoided (j). The Madras High Court has held that a suit under section 92 being a representative suit, the court has power under Order 1 Rule 10 Civil Procedure Code to add persons as additional parties whose presence may be necessary in order to enable the court effectively and completely to adjudicate upon the questions in the suit (k).

I will now take you to the different reliefs that can be prayed for and granted in a suit under section 92.

Removal of a Trustee.

The relief specified in clause (a) of section 92 (l) C. P. Code is removing any trustee. This is a new clause which was introduced for the first time in the Civil Procedure Code of 1908 and did not occur in section 539 of the earlier Code. Under the old Code there was some difference of opinion as to whether a suit to remove a trustee of a charitable trust came within the purview of section 539 of the Code. The point was discussed in a judgment of the Madras High Court in Subbayya V. Krishna (l). Mr. Justice Muthusami Ayyar, who dissented from the majority view, discussed, in an elaborate judgment, the various authorities, English and Indian, on the subject and came to the conclusion that section 539 of the Code did not authorise the removal of a trustee. Best and Weir, JJ. took the opposite view and held that a trustee could be removed in a suit brought under the section. The majority decision in this case was followed by the Calcutta, Bombay and Allahabad High Courts (m).

The view taken by the Calcutta High Court is thus explained by Harrington, J. in Sailajananda V. Umeshananda (n): "The jurisdiction of the court under section 539 arises in the case of any alleged

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(j) See Gobind V. Abdul—48 C.W.N. 225.
(k) See Ponniatha V. Moothedath—40 Mad. 110.
(l) 14 Mad. 186.
(m) Vide Sajedur V. Gour—24 Cal. 418; Sayad V. Collector of Kaira —21 Bom. 48; Huseni Begum V. Collector of Moradabad— 20 All. 46.
(n) 2 C.L.J. 460 at p. 465.

CENTRAL LIBRARY

breach of a public religious or charitable trust, and the court has power to appoint new trustees, to vest the property in them and to grant any such further relief as the nature of the case may require. It seems to me that this section involves by necessary implication a power to remove a trustee who is guilty of breach of trust. To hold otherwise would be to say that where a trustee has been proved to be guilty of breach of trust, the court though it may appoint a new trustee and vest the trust property in the new trustee is yet unable to remove the old trustee, although he has been found to be guilty of a breach of trust and although the property belonging to the trust has been vested in somebody else. I think that there is power to remove the old trustee."

A later Full Bench of the Madras High Court, however, adopted the view expressed in the dissenting judgment of Muthusami Ayyar and held primarily on the basis of the Romilly's Act in England and the decisions thereunder that section 539 did not contemplate a suit where dismissal of a trustee was prayed for (n'). The conflict is now set at rest by the new clause in section 92 (l) of the present Civil Procedure Code, and the court is quite competent to remove a trustee in a suit under section 92 C. P. Code and not merely to appoint new trustees in addition to those already existing. The expression "trustee" would undoubtedly include a trustee *de son tort* who has arrogated to him the position of a trustee though he has no legal right to do so (o).

When the plaintiffs institute a suit on the allegation that they are the lawful trustees and that the defendants are not properly appointed trustees and have no authority to act as such and there is a prayer for an injunction to restrain the defendants from functioning as trustees, it has been held by the Bombay High Court that the suit is not one under section 92 C. P. Code (p). It is pointed out that section 92 can apply only when a breach of trust is alleged or a direction from the court is invited for the proper administration of the trust. Where the plaintiffs

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(n') Rangaswami V. Varadappa 17 Mad. 462.
(o) See Ramdas Bhagat V. Krishna Prosad—A.I.R. 1940 Pat. 425.
(p) See Nilkanta V. Ramkrishna—46 Bom. 101.

CENTRAL LIBRARY

seek a declaration that the defendant has not been validly appointed a trustee, there is no allegation of a breach of trust and it is not on grounds of misconduct or misfeasance that a removal is prayed for. Strictly speaking, no direction is also solicited in such cases regarding the administration of trust. The Madras High Court has held in Subramanya Pillai V. Krishnaswami (q) that such a suit would come within section 92. One of the learned Judges (Abdur Rahim, J.) was of opinion that there was properly speaking no prayer for removal of a trustee in such cases, though there was something analogous to it which might come under the residuary clause ; but a direction from the court would be necessary even in such cases for the purpose of deciding as to whether the plaintiffs were to act alone as trustees or they were to act jointly with the defendant. According to the other learned Judge, the prayer in substance was one for the removal of the trustee. It is to be noted that the correctness of this decision was doubted in Appanna V. Narasimha (r), where it was said that such suits not being brought in a representative capacity on behalf of the public but for vindication of the personal rights of the plaintiffs, could not come within section 92.

Grounds of removal of trustee.

Any and every dereliction of duty would not justify removal of a trustee. A removal could be justified if the welfare of the institution demands it. In the case of a temple trustee, if it is found that he has not misappropriated any income and has displayed a proper interest in the maintenance and worship of the temple, the mere fact that his management does not come up to any particular standard of efficiency would not be a ground to remove him from his office and put a stranger in his place (s).

To set up one's title against the temple would *prima facie* amount to a breach of trust on the part of a temple trustee and may justify removal ; but the position would be different if there are doubts regarding the construction of the deed of gift and the trustee *bona fide* believed that the property was his

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(q) 42 Mad. 668.
(r) 45 Mad. 113.
(s) Vidé Ramaswami V. Muthukuruppan—A.I.R. 1925 Mad. 1011, 86 I.C. 371.

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own (t). The mere assertion by a trustee in the suit under section 92 itself that the trust properties are his private properties is not sufficient ground for removal ; but if he is found to have committed any breach of trust prior to the suit, his conduct in course of the suit would be an important element to be taken into consideration in deciding whether the breach should be condoned and he should be allowed to retain the office (u). In the Privy Council case of Srinivasa V. Evalappa.(v), a dharmakarta of a Hindu temple, who claimed as his own, lands found to belong to the temple and supported his claim by concocting accounts, was removed. An assertion on the part of a trustee to treat trust property as his private estate and to apply its income to his private purposes was considered sufficient for removal by the Bombay High Court in Chintamon V. Dhondo (w). Every case would depend upon its own circumstances and no hard and fast rule could be laid down. The true principle, as said above, on which such jurisdiction should be exercised is the welfare of the trust estate. A hereditary trustee should not be removed merely for inaccuracy in accounts or petty neglect of duty (x). The court in such matters could very well be guided by the general principles set out in Story's Equity Jurisprudence which were quoted with approval by their Lordships of the Privy Council in the case of Letterstedt V. Broers (y). The observations are as follows :

"But in cases of positive misconduct courts of equity haye no difficulty in interposing to remove trustees who have abused their trusts ; it is not indeed every mistake or neglect of duty or inaccuracy of conduct of trustees, which will induce courts of equity to adopt such a course. But the acts and omissions must be such as to endanger the trust property or to show a want of honesty or a want of proper capacity to execute the duties or a want of reasonable fidelity."

(t) Vide Devi Ramanujacharyulu V. Alapati—A.I.R. 1927 Mad. 1033.
(u) Vide Lokenath V. Abani—A.I.R. 1941 Cal. 68 at 74.
(v) 45 Mad. 565, 49 I.A. 237.
(w) 15 Bom. 612.
(x) Balmakund V. Nanakchand—A.I.R. 1929 All. 433.
(y) (1884) 9 A.C. 371.

CENTRAL LIBRARY

Mr. Justice Ashutosh Mookerjee thus summarised the grounds of removal of a trustee in Joygunnessa V. Majilullah (z) ; and although it was a case of a Mahommedan wakf, the same principles would be applicable to a Hindu religious or charitable endowment. "The court will be guided," thus observes the learned Judge, "solely by considerations of the welfare of the trust, and will not hesitate to remove a trustee who has purchased the trust property or concurred in a breach of trust, Exp. Reynolds (a) and Moore V. M'Glynn (b), or has wrongfully alienated trust property, Srinath V. Radha Nath (c) or has been guilty of wanton waste and neglect of duty, In the goods of James Powell (d), Ganapati Ayyan V. Savithri Ammal (e), Mayor etc. ... .of Coventry V. Attorney General (f) and Buckerridge V. Glasse (g), or shows a total lack of capacity to manage, Raja of Kalahasti V. Ganapati (h)."

A mistake honestly committed by a trustee even as to his legal position does not necessarily afford a ground for removing him from his post as manager, nor a mere lax or improvident management of the trust property which is not proved to be fraudulent or dishonest. In such cases, the proper thing to do is to frame a scheme under which a committee could be appointed to supervise and control the acts of the manager (i). In Satish Chandra Giri V. Dharanidhar (j), it was held by the Privy Council that no general rule can be laid down as to the action to be taken befitting the different kinds of religious heads. In this case a spiritual office was connected with a public endowment of a religious character and associated by tradition and custom with the control of properties and funds belonging to the institution, so that the religious and secular duties were intermingled

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(z) A.I.R. 1924 Cal. 1024, 28 C.W.N. 781.
(a) (1800) 5 Ves. 707—5 R.R. 143.
(b) (1824) 1 Irish Rep. 74.
(c) (1883) 12 C.L.R. 370.
(d) (1873) 6 N.W.P. 54, 6 All. H.C.R. 54.
(e) (1897) 21 Mad. 10.
(f) (1720) 7 Brown P.C. 235.
(g) (1840-41) Cr. & Ph. 126=10 L.J. Ch. 134=5 Jur. 163.
(h) (1918) M.W.N. 555=48 I.C. 897.
(i) Vide Annaji V. Narayan—21 Bom. 556.
(j) 44 C.W.N. 177, 71 C.L.J. 1.

CENTRAL LIBRARY

and inseparably blended. In such a case, it was held that the civil court has jurisdiction under section 92 C. P. Code to deal with not only the secular side of the office but also the religious side and deal with the occupant in respect of both offices. Mere mismanagement or incapacity may not be sufficient in all cases for removal from the religious office and in certain cases a less drastic step than removal, namely, association of a committee of management may meet the ends of the case. "The true rule" their Lordships observed, "in such matter can be stated to be that if it be found by the court that the functionary in the exercise of his duties has put himself in a position in which the court thinks that the obligation of his office in connection with the endowment can no longer be faithfully discharged without danger to the endowment, that is a sufficient ground of removal if need be from both his offices." In this case the Mohunt was found to be of immoral character and the Privy Council held definitely that the moral character of a Mohunt can be considered by the court in connection with his fitness to remain in office and his liability to be removed therefrom. I have told you already in a previous lecture that marriage, incontinence or sexual vice on the part of the Mohunt where the institution is a celibate institution would be one of the strongest grounds that could be assigned in support of the prayer for removal.

Appointment of new trustees.

The second relief embodied in clause (b) subsection (1) of section 92 is appointment of a new trustee. "The two clauses (a) and (b) are placed in such juxtaposition as to lead one to suppose that appointing a new trustee is dependent upon the removal of the old one, or at any rate where the appointment of a trustee is necessary in place of a trustee who has either been removed or has ceased to be a trustee" (k). In the matter of appointment of a new trustee, it does not follow even when the founder has laid down that management should be hereditary in a particular family, that on the removal of the existing trustee for misconduct his heir must necessarily be appointed. Two things may be urged against the ap-

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(k) Per Shurawardy, J. in Abdul Alim V. Abir Jan—55 Cal. 1284 at p. 1289.

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pointment of the heir in such circumstances. In the first place, the misconduct of the existing trustee if it consisted of misappropriation of trust funds or other acts of a similar nature, cannot but affect the heir ; and in fact the whole family of the misconducting trustee may be benefitted by such acts of spoliation. In the second place, no person can be, strictly speaking, said to be the heir of another so long as the latter is alive and is merely dismissed or suspended for some misconduct (l). Whatever may be said about family and private endowments, in the case of a public trust the court should have unfettered discretion in making such arrangements for management of the trust as would, in its opinion, be best conducive to the interest of the beneficiaries. In the case of Mahomed Ismail V. Ahmed Moolla (m) which related to a public wakf, the Judicial Committee observed as follows :

"It has further been contended that under the Mahomedan law the Court has no discretion in the matter and that it must give effect to the rule laid down by the founder in all matters relating to the appointment and succession of trustees or mutwalees. Their Lordships cannot help thinking that the extreme proposition urged on behalf of the appellants is based on a misconception. The Mussulman law, like the English law, draws a wide distinction between public and private trusts. Generally speaking, in case of a wakf or trust created for specific individuals or a determinate body of individuals, the Kazi, whose place in the British Indian system is taken by the civil court, has in carrying the trust into execution to give effect so far as possible to the expressed wishes of the founder. With respect, however, to public, religious and charitable trusts, of which a public mosque is a common and wellknown example, the Kazi's discretion is very wide. He may not depart from the intentions of the founder or from any rule fixed by him as to the objects of the benefaction ; but as regards management which must be governed by circumstances he has complete discretion. He may

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(l) Vide G. Iyyer's Law of Endowment, 2nd Edn. p. 638.
(m) 43 I.A. 127, 20 C.W.N. 1118.

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defer to the wishes of the founder so far as they are conformable to changed conditions and circumstances, but his primary duty is to consider the interests of the general body of the public for whose benefit the trust is created. He may in his judicial discretion vary any rule of management which he may find either not practicable or not in the best interests of the institution." After quoting the various clauses of the section, their Lordships further observed :

"In giving effect to the provisions of the section and in appointing new trustees and settling a scheme, the Court is entitled to take into consideration not merely the wishes of the founder, so far as they can be ascertained, but also the past history of the institution and the way in which the management has been carried on heretofore, in conjunction with other existing conditions that may have grown up since its foundation. It has also the power of giving any directions and laying down any rules which might facilitate the work of management, and, if necessary, the appointment of trustees in the future."

The duty of the Court is to appoint the best persons available which will secure, in the best manner possible, the interests of the endowment, though in making the selection the practice of the institution, the previous association of the particular person or the family with the institution are material circumstances which should be taken into consideration (n). In making an appointment the court would undoubtedly have regard to the line of devolution in the deed of endowment, but it may owing to the exigencies of a case depart from the arrangements contemplated by the deed (o). A Court can also impose conditions as it thinks proper to ensure due performance of duties by the trustees even when the office has apparently been hereditary. It was observed by Sadasiva Ayyar, J. in Phatmabi V. Haji Musa (p) that a claim to succeed by hereditary right to a trustee's office or to a religious office should be looked upon with a strong disfavour by the court. "The holding of any office" thus observed the learned Judge, "should depend on the necessary

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(n) Vide Bapugouda V. Vinayak—A.I.R. 1941 Bom. 317.
(o) Vide Faizunnessa V. Moulvi Asad—41 C.W.N. 298.
(p) 38 mad. 491.

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qualifications, and, while heredity might raise a feeble presumption of fitness to be considered by Courts in arriving at a decision on the question of the successorship to the office, it should not be raised to the dignity of a principle which creates a right of succession to any office, unless the terms of the original foundation of the office constrain the courts to treat heredity as the factor to be considered in deciding on the right to the office or unless there has been such a precise and uniform course of descent by heredity. (almost irrespective of any consideration as to the person best fitted for the office) as to raise an irresistible inference as to the intentions of the original creator of the office."

Vesting property in the trustee.

The third clause does not call for any comment. Whenever a trustee is removed and a new trustee is appointed, it is necessary to vest the trust property in the new trustee and the Court is empowered to make a vesting order under this clause.

Direction of accounts and enquiries.

The fourth clause deals with directions relating to accounts and enquiries. A trustee if he is removed has got to render accounts for the purpose of obtaining his discharge. It becomes also necessary to take accounts as a preliminary to settlement of a scheme. The first thing to be done as the Privy Council observed in Chotalal V. Manohar (q) before consideration of a scheme is to take an account of the trust property. Until the trust funds are ascertained, it seems impossible that any scheme can be settled. Irrespective of the framing of a scheme, the trustee can be called upon to render accounts for the purpose of showing how the trust funds were distributed. The general principles upon which accounts are taken from trustees of a charity are thus stated in Tudor on Charity on the basis of the pronouncement of Lord Eldon in Attorney General V. City of Exeter (r) :

"With respect to the general principle on which the Court deals with trustees of a charity, though it holds a strict hand over them when there is wilful misapplication, it will not press severely upon them where it sees nothing but mistake. It often happens, from the nature of the instruments creating the

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(q) 26 I.A. 199 at p. 201.
(r) 2 Russ. 45 at p. 54.

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trust, that there is great difficulty in determining how the funds of a charity ought to be administered. If the administration of the funds, though mistaken, has been honest, and unconnected with any corrupt purposes, the Court, while it directs for the future, refuses to visit with punishment what has been done in time past. To act on any other principle would be to deter all prudent persons from becoming trustees of charities."

In determining how far accounts can be carried back against trustees of charity, the Court will be guided by what it deems proper in the circumstances of each individual case. The authorities go to show that in the absence of any special reasons to the contrary, accounts could be directed as far back as there is misapplication of trust funds. In aggravated cases, it can be directed even from the foundation of charity (s).

In Attorney General V. Mayor of Exeter (t), a corporation which had been in possession of charity lands from 1629 admitted by their answer that they had retained the surplus rents and applied them to corporate purposes different from those of the charity. It was held that the corporation should be directed to account from 1629 downwards. On taking accounts, a very large sum of money was found due. Having regard to the hardship involved in the case the Lord Chancellor referred it to the Attorney General to certify whether it would be proper that the charity should accept a less sum in lieu of the balance stated in the Master's report and the Attorney General having certified that it would be proper that the charity should accept a sum less than one-half of the balance, the certificate was confirmed and a decree made accordingly.

As the Court has a discretion in the matter of fixing the period for which accounts should be taken, it generally deals leniently with trustees when they are found to have misapplied funds under an honest mistake without any corrupt motive whatsoever.

(s) See Tudor on Charities, 2nd Edn. p. 241.
(t) 2 Russ. 362.

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The principle was thus stated in Attorney General V. Pretyman (u) :

"I have always considered that where a party has, quite innocently, possessed charity property which ought to have been applied according to the directions of the trust, and has so continued for a number of years until by some accidental circumstance he has been apprised of the erroneous application, if he then comes forward and gives every facility to the future due application of the trust money, it is by no means an improper exercise of the discretion of this Court to save him as much as possible from a bygone account."

In Attorney General V. Newbury (v) the accounts were decreed for a period of about 10 years as the trustees were found to have acted in ignorance. In case misapplication was due to a *bona fide* doubt as to how the money was to be spent according to the terms of the trust, accounts as a rule are not carried back prior to the commencement of the action (w). The Court may also in the exercise of its discretion decline to direct accounts at all where the prosecution of them would lead to harassing and protracted enquiries which would not at all be beneficial to charity (x). The above principles were applied by a Bench of the Calcutta High Court in Nirmal V. Jyoti Prasad (y), although the case was one of family debutter. An order was made in this case for removal of one of the shebaits and he was directed to render accounts for a period of about 12 years.

It was held by the Calcutta High Court in Faizunnessa V. Moulvi Asad (z) that even when the trustee's liability to account was established, it was not obligatory on the court to make an order for accounts against him. If the income of the endowment is very small and its admitted expenditure does not leave much in the shape of a balance and no account books are kept, the Judge might properly decide that it would not be

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(u) 4 Beav. 462 at 466.
(v) 3 My. & K. 647.
(w) Vide Tudor on Charities p. 242.
(x) Attorney General V. Dixie—13 Ves. 519.
(y) 45 C.W.N. 709.
(z) 41 C.W.N. 298.

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profitable to make order for accounts against a trustee who was directed to be removed.

Accounts on what basis ?

Accounts may be directed in the common form, that is to say on the basis of what the trustee actually received or on the basis of what he might have received but for wilful default on his part. The second is undoubtedly an onerous rule and will not be ordered unless the circumstances amount to active breach of trust or otherwise justify enquiry on that basis. In English law there are special rules of procedure when an order for accounts on the basis of wilful default is demanded or ordered. Such a case must be expressly made in the pleadings and it is necessary that at least one case of wilful default should be shown. Under the rules of Supreme Court, an order for accounts on the basis of wilful default can be made even after judgment which directs accounts in the common form provided special leave is obtained but the necessity of making such a case in the pleadings still remains. In English law ordinarily charges of wilful default are disposed of at the hearing and not referred for enquiry in the chambers (a).

In the Indian Civil Procedure Code there is a provision in Order 20 Rule 17 which seems to have been taken verbatim from R.S.C. Or. 33 r.3 and which empowers the court to direct accounts to be taken either by the decree or any subsequent order giving special directions with regard to the mode in which the account is to be taken. It has been held by the Privy Council in Monohar V. Bhupendra (b) that it is better to express directions specifically in the decree than to insert general reference to the judgment in the decree.

Clauses (e) and (f).

Clause (e) of sub-section (1) authorises the court to declare what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust. Such directions may be necessary when there are several objects of the trust and the founder himself has not apportioned the income of the trust property among the different objects. They may be necessary also because of altered circumstances which necessitate an alteration in the original allot-

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(a) See Smith V. Armitage—24 Ch. D. 727 ; see Godfroy on Trust p. 678.

(b) A.I.R. 1936 P.C. 325.

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ments. The question as to what portion of the offerings to a deity would go to the Pujari and what portion to the servants of the temple has been held to be a question which could be decided by the court under this clause (c). This clause along with the next which deals with sanctioning of alienation of trust property for purposes of carrying on the trust are meant to be directions solely for the proper management of the trust estate.

Clause (g). Settling of scheme.

Settling of scheme is one of the most important reliefs relating to the administration of public trust which is specified in clause (g) of sub-section (1). The directions of the court as to how a trust is to be administered can be conveniently embodied in a scheme and this obviates the necessity of approaching the court for directions on individual occasions. The trustees are to carry out their administration in accordance with the scheme framed by the court and in case any difficulty is felt in carrying out its directions, the scheme can be altered or amended by the court in such a way as is considered proper. In the case of Md. Ismail Ariff V. Ahmed (d), which has been referred to already, the Privy Council while dealing with a Mahommedan public wakf laid down that the court has a complete discretion in framing a scheme for the management of the trust. It may and certainly ought to defer to the wishes of the founder so far as they are conformable to changed conditions and circumstances but its primary duty is to consider the interests of the general body of the public for whose benefit the trust was created. It may vary any rule of management which it finds either not practicable or not in the best interest of the institution. These principles were reiterated in a subsequent pronouncement of the Judicial Committee (e), and it was held that the court may not depart from the intention of the founder as to the objects of the foundations. But it has complete discretion as regards management in the exercise of which it is entitled to give any direction or lay down any rules for facilitating management and appoint-

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(c) See Sakharam V. Ganu—45 Bom. 683.
(d) 43 I.A. 127.
(e) Vide Mahomed Ally V. Akberally—38 C.W.N. 452 (P.C.).

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ment of trustees in the future, and in doing so it is entitled to take into consideration the wishes of the founder only so far as they are conformable to changed conditions and circumstances and also to the past history of the institution, the previous system of management and the conditions which have grown up since the foundation.

The same principles are applicable in regard to schemes relating to Hindu religious foundations. In Sripati Prasadji V. Barot Laxmidas (f), it was held by the Privy Council that in case of a religious sect and its property to which section 92 of the C. P. Code applies, the principle to be followed in settling the scheme is that the institutional trust must be respected so that there may be no interference with its spiritual, ceremonial or ethical code ; but the sect and body of worshippers shall have the protection of the Court against their property being the subject of abuse, peculation and waste.

If there is any danger or possibility of the trust properties being wasted, a scheme can be framed under which a committee of management is to be appointed to supervise the work of the trust or additional trustees may be associated with the existing trustees to serve as a check upon them (g). Special provisions may be made in the scheme for protection of the trust funds, but subject to such restrictions as may be imposed for this purpose, it is not proper to lower the position of the Mohunt or weaken his spiritual authority (h). In Srijib Nayatirtha V. Smt. Dandiswami (i) the question arose relating to the position and authority of the Mohunt of the well known shrine of Tarakeswar under the scheme framed by the court in a suit under section 92 of the C. P. Code. The learned Judges after referring to the terms of the scheme observed as follows :—

"Under the general law the Mahant is the head of the institution ; it is he and he alone who has the power of management and administration over the

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(f) 33 C.W.N. 352 (P.C.).
(g) See Annaji V. Narayan—21 Bom. 556 ; Prayag Das V. Tirumala—34 I.A. 78.
(h) See Prayag Das V. Tirumala—34 I.A. 78.
(i) A.I.R. 1941 Cal. 618.

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whole institution, over the worship and the properties, and all the officers are to be under his control and to act according to his direction in all matters concerning the institution. These powers can be curtailed by the civil court in a scheme framed under section 92 Civil Procedure Code, but only to the extent indicated in the scheme either expressly or by necessary implication. The claim of the members of the commitee as laid in the case before us, that the committee is supreme in all matters concerning the management of the properties of the institution, that the mahant is subordinate to the committee and that all the residuary powers beyond those which have been specially given to the committee by the scheme are in the committee and not in the mahant cannot be supported. We think that the correct position is that the mahant is the supreme head of the Tarakeswar endowment, he is not subordinate to anyone, that all powers concerning the management of the shrine and the properties of the endowment are in him, and all powers incidental to or necessary for the management of the worship and the properties are in him, save and except those powers which have been taken away from him either in express terms or by necessary implication by the scheme itself and vested in the committee, conveniently termed the committee of management."

Cypres doctrine.

In framing a scheme the court is certainly entitled to apply the *cypres* doctrine and when the *original* object of the trust is impossible of performance or is impracticable or does not exhaust the entirety of the income, the court can prepare a scheme for the utilisation of the trust funds by applying the *cypres* doctrine. The circumstances under which and the mode in which the doctrine is to be applied have been discussed already in a previous lecture.

Alteration or amendment of the scheme.

It is settled law that a court which has sanctioned a scheme for administration of a religious or charitable trust is competent from time to time to vary and amend the scheme as the exigencies of the case may require. This proposition is well supported by authorities both English and Indian (j). In many

(j) Vide the cases mentioned in Manadananda V. Tarakananda—37 C.L.J. 281 at p. 283.

CENTRAL LIBRARY

cases it happens that provision is made in the scheme itself for its alteration by an application to the court by the parties to the suit or by persons interested. There is difference of opinion on the point as to whether provisions like this empower the court to alter the scheme on an application made to it without any fresh suit under section 92 C. P. Code. The Madras High Court has answered this question in the negative. The main reason given for this view is that after the scheme is settled, the suit comes to an end and to say that a person could apply to alter the scheme once framed would necessarily mean that the suit is pending. It is not possible to say that a suit remains pending for all time to come simply because the scheme framed contains a provision that an application can be made for altering the scheme. It is said that the analogy of English practice cannot be applied to this country and if the contrary view is adopted, the result would be to abrogate the provision of section 92 altogether (k). The question was elaborately considered in a Full Bench case of the Madras High Court (l), and the propositions of law laid down are as follows :

"If in a decree for a scheme framed under section 92 C. P. Code liberty is given to persons to apply to the court for directions merely to carry out the scheme already settled, such reservation of liberty in the deed will be *intra vires* if the assistance of the court can be given without offending section 92 ; but where liberty is given to apply to the court for alteration or modification of the scheme, such reservation is *ultra vires* as offending section 92."

The Calcutta, Bombay, Allahabad and Patna High Courts have, however, taken the opposite view. In Chandra Prasad V. Jinabharati (m), it was stated by Patkar, J. that the uniform practice of the Bombay High Court has been to embody in the scheme a rule giving liberty to any person interested in the trust, to apply for modification or alteration of the scheme. The Privy Council itself approved of such directions

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(k) See Abdul Hakim V. Buramiddin—49 Mad. 580.
(l) Vide Veeraraghavachariar V. The Advocate General of Madras—51 Mad. 30 F.B.
(m) 55 Bom. 414.

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and scheme in various cases (n). It is further pointed out that the consent of the Advocate-General is required for the settling of a scheme where no scheme existed before, but once the court has seisin of a case relating to charitable and religious trust involving the framing of a .scheme, the correct, appropriate and speedy remedy would be by way of an application rather than the cumbrous procedure of a suit in case a modification is required in the scheme owing to change of circumstances. A second suit for settlement of a scheme might probably be barred by the principle of *res judicata*. In the Calcutta High Court the validity of such provisions in schemes have never been questioned and the Patna High Court has followed the Calcutta decisions (o). In concurrence with this view, the Allahabad High Court has held that there is nothing in section 92 C. P. Code which makes the reservation of a power to modify the scheme in future *ultra vires*. The power of the court to settle a scheme for the administration of a trust is sufficiently comprehensive to include a provision which makes the scheme alterable by the court in future. If the scheme is amended subsequently by the court within the limits laid down by the decree itself, the court is really giving effect to its own decree rather than amending it.

Order amending a scheme : whether appealable.

An order amending a scheme cannot, strictly speaking, be treated as one under section 47 C. P. Code. There is authority in support of the view that under certain circumstances it might have the effect of a decree and be appealable as such. The better view seems to be that the order amending the scheme is not appealable and its propriety can only be challenged by way of revision under section 115 of C. P. Code (p).

Two other matters remain to be considered in connection with a suit under section 92 C. P. Code. The first is, how far the decision in such suit is conclusive for future purposes and operates as *res judi-*

(n) Vide Prayag Das V. Tirumala—34 I.A. 78 ; Sevak Kripasankar V. Gopal Rao—15 Bom. L.R. 13, 16 C.L.J. 640 (P.C.).

(o) Vide Umeshananda V. Sir Ravaneswar Prasad Singh—17 C.W.N. 841 ; Md. Waheb V. Abbas Hussain—A.I.R. 1923 Pat. 420, 71 I.C. 280.

(p) See Srijib Nayatirtha V. Dandiswami Jagannath—A.I.R. 1941 Cal. 618.

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cata. The other is what should be the principles relating to awarding of costs in such proceedings.

Decision under section 92 operates as *res judicata.*

As the suit under section 92 is a representative suit and the plaintiffs represent all the persons interested in the trust, a decision in such a suit will operate as *res judicata* under the provision of section 11 explanation 6 of the C. P. Code ; but the plea of *res judicata* will not be attracted if from some reason or other it ceases to be a representative suit. Thus when in a suit commenced with the sanction of the Advocate-General as contemplated by section 92 C. P. Code certain persons, who are strangers to the suit, are added as parties and additional reliefs outside the scope of section 92 are claimed against them, the suit to that extent ceases to be a representative suit and section 11 explanation 6 C. P. Code ceases to apply (q). In Faizunnessa V. Moulvi Asad (r) it was held by a Division Bench of the Calcutta High Court that when new trustees were appointed, without judicial enquiry, on the consent of the parties, such appointment would not operate as *res judicata* and bar the future claim of any other claimant to the office who was not a consenting party to the order.

Award of costs in section 92 suits.

In English law the rules with regard to the costs of charity trustees do not differ from those which apply in case of private trustees. As between themselves and other parties to the proceedings the trustees are in the same position as any other litigant, but as between them and the trust estate they are entitled to all costs, charges and expenses properly incurred by them in connection with the suit. Such costs are a matter of contract and not like ordinary costs of action to be fixed in the discretion of the court ; and a trustee can be deprived of such costs only if he is found guilty of misconduct (s). In English law, if the suit of the relator is instituted *bona fide* and a decree is obtained therein, the plaintiff is entitled to have his costs as between attorney and client paid out of the trust estate (t). Even in case of dismissal of the suit when the relator acted

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(q) See Abdur Rahim V. Burkat—55 I.A. 96.
(r) 41 C.W.N. 298.
(s) Tudor on Charities, 2nd Edn. p. 380.
(t) Tudor on Charities, 2nd Edn. p. 378.

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in a *bona fide* manner in the interests of charity the court is not precluded from giving him costs. At any rate, no costs should be awarded against him (u). In Prayag Das V. Tirumala (v), the Privy Council ordered costs of both the parties to the suit to be paid out of the estate. Where the suit is a *bona fide* suit and after a protracted proceeding the allegations of the plaintiffs are fully established, it is only fair that the costs of the plaintiffs should be paid out of the trust estate (w).

Thus you see that for maladministration or breaches of trust in case of religious or charitable trust of a public character, remedies of the most comprehensive character have been provided for in section 92 C. P. Code. Section 92 of the C. P. Code as well as section 14 of the Religious Endowments Act contain the statutory provisions relating to suits in regard to such trusts and the procedure indicated in these sections has got to be followed for obtaining any of the reliefs which these sections provide for. As I have told you already there may be suits relating to public religious or charitable trusts which are outside the scope of section 92, but these are for the most part suits for vindication of the personal rights of the plaintiff and are not representative suits founded on any allegation of breach of trust or the necessity of having directions from the court regarding the administration of the trust. It is not material to refer to such suits for purposes of our present discussion where I propose exclusively to deal with remedies for breaches of trust and the suits and judicial proceedings in relation thereto.

Suit against alienee of trust property.

Probably the only type of cases outside section 92 C. P. Code which are connected with breaches of trust are for recovery of possession of trust property which has been improperly alienated by a trustee to a stranger. I have already told you that a relief by way of ejectment of a stranger purchaser of a trust property is outside the scope of section 92 C. P. Code and even though according to certain judicial decisions the alienee can be made a party to a suit under section 92, no decree for possession can be claimed or passed

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(u) Ibid page 380.
(v) 34 I.A. 78.
(w) Vide Wares Ali V. Sheikh Samsuddin—63 C.L.J. 573.

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in such suit. The true position is that so long as a trustee has not been removed by a decree of court he alone is competent to maintain a suit for possession. When the existing trustee is removed and a new trustee is appointed in whom the trust estate vests, it is for the new trustee to institute a suit for ejectment against the transferee on the footing that he is a trespasser and has acquired no rights by his purchase. There is no question of claiming accounts against such person ; if the alienation is found to be improper and not binding on the estate, he would be liable to pay mesne profits for the period of his unlawful possession.

Remedies in case of breach of trust of private religious or charitable endowments.

We will now deal with suits and judicial proceedings in relation to breach of trust in regard to religious and charitable trusts of a private nature. In Indian law, as you know, there can be a private religious institution the aim of which is to benefit a determinate body of individuals, as for example, the members of a family. The commonest illustration of this form of trust is a family or private debutter. The suits relating to such private trust are not regulated by any statute as in the case of public trusts ; they are governed entirely by the general law of the land which prescribes the remedies for enforcement of civil rights.

In a private or family debutter, the beneficiaries are a limited and defined class of persons viz., the members of the family. If the trustee or shebait is guilty of mismanagement, waste, wrongful alienation of debutter property or other neglect of duties, a suit can be instituted for remedying these abuses of trust. The suit could be for the removal of the trustee with a prayer for accounts as ancillary to the removal. It would lie for a declaration that any alienation of the debutter property is not binding on the deity or for recovery of possession of the property thus wrongfully alienated. A suit can also be filed for settlement of a scheme for the purpose of effective carrying out of the trust. I will take up for consideration the different kinds of relief that can be claimed in cases of this description. The first question which we have to consider is, who are the persons competent to institute such suits.

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Persons entitled to sue in case of private or family debutter.

You have been told already in a previous lecture that the right of suit in case of a debutter estate is in the shebait, but when the shebait himself is the misconducting party, whose removal is sought for or where property has been improperly alienated by the shebait and he is unwilling or incapable of bringing a suit himself, any other person interested in the family debutter can sue, or the deity itself as a juristic person can institute a suit through somebody as next friend.

Founder or his heirs are entitled to bring suits.

The founder of the endowment or his heirs are always competent to institute suits for proper administration of the debutter, for removal of the old trustee and for appointment of a new one. In Monohar Mookerjee V. Peary Mohan (x), Ashutosh Mookherjee, J. observed as follows :

"The authorities are clear upon the point that, in certain events, for instance, where the line originally indicated by the founder fails, the founder or his heir has the right to nominate the shebait or has vested in him the shebaitship, and this principle is applicable equally to private and public trusts (y). Analogous to this doctrine is the principle that the founder or his heirs may sue for the enforcement of the trust, for the removal of the old trustee, for the appointment of a new one and may thereby secure the proper administration of the trust and its properties. Whatever restrictions may have been prescribed by the legislature as to the mode of institution of such suits in respect of public trusts, the rights of the founder of a private trust or of his heirs remain unimpaired. Such right of suit by the founder or his heirs is recognised in a long series of decisions" (z).

In this case the plaintiff was not merely one of the heirs of the founder but the next shebait under

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(x) 24 C.W.N. 478 at 484.

(y) Sital Das V. Pratap Chandra—11 C.L.J. 2 (1909) ; Raj Krishna V. Bepin Behari—I.L.R. 40 Cal. 251, S.C. 17 C.W.N. 591 (1912) ; Gauranga Sahu V. Sudevi—I.L.R. 40 Mad. 612 (1917).

(z) Vide Bhurruck V. Golam—10 W.R. 458 (1868) ; Mohesh V. Koylash—11 W.R. 443 (1869); Biddia Sundari V. Durganund—22 W.R. 97 (1874) ; Shoratan V. Ram Pargas—I.L.R. 18 All. 227 (1896); Samsundra V. Kandasami—I.L.R. 10 Mad. 375 (1877) ; Sathappayyar V. Periaswami—I.L.R. 14 Mad. 1 (1891) ; Gajapati V. Bhagaban—I.L.R. 15 Mad. 44 (1891) ; Ganapati V. Savithri—I.L.R. 21 Mad. 10 (1897).

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the will of the latter entitled to succeed to the office if the defendant who was the existing shebait was removed for misconduct.

Prospective shebait can sue.

A prospective shebait under the terms of the grant has been held competent to maintain a suit for a declaration that alienations made by the shebait for the time being are unauthorised and are not binding on the trust estate (a).

So also the members of the family.

It was held by the Judicial Committee in Pramatha V. Pradyumna (b) that in a family debutter although one person acts as a shebait, the other members of the family including the females are interested in the maintenance of the worship. Any member of the family, therefore, who is interested in the worship of the deity is entitled to bring a suit for a declaration that certain properties do not belong to the shebait personally but are trust properties and any alienation of such property made by the shebait is not binding on the deity. A person, who is not a member of the family, however much he might be interested in the welfare of the deity, is not entitled to bring any such suit (c).

Even a co-shebait can bring a suit against the other shebaits on behalf of the deity.

It was held in Nirmal V. Jyoti Prasad (d) that even a co-shebait as a party interested in the endowment can bring a suit for removal of his co-shebaits on the ground of misappropriation. This is justified on a two-fold ground. In the first place, a co-shebait can bring a suit on the principle that a suit on behalf of a deity can be brought by some of the co-shebaits when the rest are unwilling to join as plaintiffs or have done some act precluding them from doing so. In the second place, it can be justified on the ground that the deity can sue through a next friend who has no interest adverse to it and it is immaterial that such next friend happens to be one of the shebaits.

Removal of a shebait.

The grounds on which a shebait could be removed have been dealt with already. What constitutes a sufficient reason is a matter of determination by the court in the exercise of a sound judicial discretion and there must be a clear necessity for interference

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(a) Vide Giris V. Upendra—35 C.W.N. 768.
(b) 52 I.A. 245.
(c) See Panchkori V. Amodelal—41 C.W.N. 1349.
(d) 45 C. W. N. 709.

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for the saving of the debutter estate. It would be sufficient ground, if the shebait by his conduct places himself in such position which makes it impossible for him to discharge faithfully the duties of his office (e). Where a shebait has acted with gross impropriety and breach of trust, he is liable to be removed from office even if no actual misappropriation had resulted and the deity had not suffered loss. This was held in Nirmal V. Jyoti Prasad (f). In this case a suit was brought by the deity through one of the shebaits against the other shebaits and accounts were claimed on the footing that the misconducting shebait, who has to be removed from office, must render accounts for the period of his stewardship. In accordance with the decision of the High Court, one of the trustees was directed to be removed and it was held that it was necessary that accounts should be taken from him before he got his discharge. As regards the period of accounting, the High Court followed the principles applied by the Chancery Courts in England in regard to charitable trusts and held that the period of accounting would have to be determined by the court having regard to the circumstances of each individual case. The accounts can be taken as far back as the date of the misapplication of the trust funds or even the date of the foundation of the charity. On the other hand, it was open to the court to decline to order accounts if it was of opinion that in the circumstances of the case any such enquiry would not yield any beneficial results.

Recovery of property wrongfully alienated.

If a shebait has improperly alienated a trust property, a suit can be brought, as stated above, by any person interested, for a declaration that such alienation is not binding on the deity. But no decree for recovery of possession can be made in such a suit unless the plaintiff in the suit has a present right to possession. A merely interested person cannot claim a decree for possession in his favour. So long as the trustee is not removed or does not forfeit his office, he alone can bring a suit for recovery of possession of the deity's property. If the suit is instituted

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(e) See Monohar V. Raja Peary Mohan—24 C.W.N. 478.
(f) 45 C.W.N. 709.

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by the deity through a next friend and there is a prayer for removal of the shebait, who is made a party defendant to the suit, there can be a decree for possession of the alienated property made in such suit. Such a decree can also be passed if the plaintiff is the next shebait under the terms of the grant and the court after removing the existing shebait from his office declares the right of the plaintiff as the shebait in law in the suit itself (g).

Framing of scheme in a private debutter.

The question whether a suit for framing of a scheme in a family debutter is at all entertainable by a civil court was elaborately discussed by a Division Bench of the Calcutta High Court in the case of Bimal Krishna V. Gunendra (h), and it was held that a scheme for administration of a private debutter could be framed by a civil court. It was argued in that case on the authority of the Privy Council judgment in Gopal Lal Sett V. Purna Chandra Basak (i) that as section 92 of the C. P. Code does not apply to a private debutter, there was no jurisdiction in a civil court to frame a scheme in respect of the same. The relevant passage in the Privy Council judgment runs as follows :

"Their Lordships see no reason to doubt that the court executing the duty of appointing trustees would pay due regard to the claims of that branch of the family with whom the worship was established and by whom the services performed, but they regard the gift as in effect a private trust to which the provisions of section 539 of the Code of Civil Procedure, 1882, would not apply, and consequently the establishment of a scheme for its administration, as provided by the decree of the High Court, is inappropriate." Commenting on this passage, Mr. Justice Mukherjea observed as follows :

"It is necessary.....to look into the facts of the case closely to find out what their Lordships actually meant. It is clear from the facts set out in that judgment that in this case there was no gift to the idols but the property was given to one Udoy who

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(g) See Biddiya Sundaree V. Doorganand—22 W.R. 97.
(h) 41 C.W.N. 728.
(i) 49 I.A. 100.

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was made a trustee in the legal sense of the word and upon whom were cast certain duties, both religious and secular in their nature. He was to perform the worship of a certain idol with the income of a particular property and the remainder of the income was given to three people whose names were given in the will. In a case lilke this where a private trust was created, not of a purely religious character, and the ownership of the property was vested in the trustee, in the legal sense of the word, the Court could not possibly frame a scheme for the administration of the trust estate. In a religious endowment, however, where the deity who is a perpetual infant is the legal owner of the property and the shebaits occupy the position of managers or guardians, the position is different. In the case of Monohar Mookerjee V. Peary Mohan Mookerjee (j), it was held by Mr. Justice Ashutosh Mookerjee, sitting with Mr. Justice Panton, that

'In respect of a Debutter in this country, the founder or his heirs may invoke the assistance of a judicial tribunal for the proper administration thereof on the allegation that the trusts are not properly performed.'

Mr. Justice Mookerjee invoked the analogy of the rule of English Law according to which in case of a charitable Corporation where the founder was a private person, he and his heirs became visitors in law and in case such heirs were extinct or were incompetent, the visitatorial powers devolved on the Crown. It is true that in England such trusts are regarded as matters of public concern and the Attorney-General who represents the Crown takes proceedings on his behalf for protection of these charities. Vide Attorney-General V. Brown (k). In India, the Crown is the constitutional protector of all infants and as the deity occupies in law the position of an infant, the shebaits who represent the deity are entitled to seek the assistance of the Court in case of mismanagement or mal-administration of the deity's estate and to have a proper scheme for management framed which would end the disputes amongst the guardians

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(j) 24 C.W.N. 478, 30 C.L.J. 177 (1919).
(k) (1818) 1 Swanston 265 at p. 291.

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and prevent the debutter estate from being wasted or ruined. This principle was reiterated in Rabindra V. Chandika (l). The Privy Council itself directed the framing of a scheme in case of a private debutter in the case of Pramatha V. Prodyumna (m) and the case was remanded to the trial court expressly for that purpose. The same directions were given by this court in the case of Prosad Das Pal V. Jagannath Pal (n) which was also a case of private debutter and we are unable to uphold the extreme contention raised by Mr. Biswas that a Civil Court is incompetent to entertain a suit, the object of which is to have a scheme established for the administration of a private debutter."

The framing of a scheme may not be appropriate in all cases (o), particularly where there is no gift to the idol, but a mere charge is created for certain acts of worship (p).

When a private trust is created through the instrumentality of a trust deed, the rights of the parties would undubtedly be regulated by the terms of the deed and the remedy for breach of trust will be found in the general law for enforcement of trust.

Conclusion.

With this chapter we close our discussions on the law of charitable and religious trust among the Hindus. You have noticed what I stated at the beginning that the materials for the law are very scanty and the whole structure of legal rules and principles that we see today has been practically built up by judicial decisions mainly on the basis of certain principles of the equity law in England and the customs and usages of our country. Some amount of complexity and want of uniformity are no doubt noticeable in the law as it now stands. Judicial decisions on a subject, which is still in the course of development, can seldom be uniform and what I have attempted to do, therefore, is to reconcile and harmonise the various decisions from the point of view of general principles as could be gathered primarily

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(l) 53 C.L.J. 621 (1931).
(m) L.R. 52 I.A. 245, s.c. 30 C.W.N. 25 (1925).
(n) 37 C.W.N. 181 (1932).
(o) Settur Ramaswamiar V. Meraswamiar—45 I.A. 1.
(p) Vide Gopal Lal V. Purna—49 I.A. 100.

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from the pronouncements of the Judicial Committee. It may be necessary either sooner or later to codify the whole law on the subject. So far we have two extensive provincial legislations in regard to religious endowments, one in Madras and the other in Orissa. In the State of Madras, a fresh legislation on the subject has just now come on the statute book. Each State may have its special usages and special problems, but it seems to me that the wealth of legal principles that lie enshrined in the large number of decisions of the Judicial Committee may well be utilised for framing a law on an all-India basis. It is outside the province of these lectures to discuss the laws of any particular State. The recent Madras Act and the Orissa Act are, however, attached by way of appendix to these lectures.

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ORISSA ACT III OF 1941.

The Orissa Hindu Religious Endowments (Amendment) Act, 1941.

An Act to Amend the Orissa Hindu Religious Endowments Act, 1939.

Preamble. Orissa Act IV of 1939.

Whereas it is expedient to amend the Orissa Hindu Religious Endowments Act, 1939, in the manner hereinafter appearing ;

The Governor of Orissa, in exercise of the legislative powers assumed to himself by Proclamation, dated the 6th November, 1939, under section 93 of the Government of India Act, 1935, hereby enacts as follows :—

Short title.

1. This Act may be called the Orissa Hindu Religious Endowments (Amendment) Act, 1941.

Amendment of section 31 of Orissa Act IV of 1939.

2. In section 31 of the Orissa Hindu Religious Endowments Act, 1939 (hereinafter referred to as the said Act), for sub-section (4) the following sub-section shall be substituted, namely :—

"(4) the trustee or any person having interest may, within six months of the date of the order passed by the Commissioner under sub-section (3), institute in the Court a suit to modify or set aside the same ;

if such a suit is instituted, the Court shall give at the expense of the plaintiff notice of the institution of the suit to all persons having interest, either by personal service, or where from the number of persons or any other cause such service is not reasonably practicable by public advertisement, as the Court may in each case direct ;

subject to the result of such a suit, the order of the Commissioner shall be final ;"

Amendment of section 51 of Orissa Act IV of 1939.

3. In sub-section (1) of section 51 of the said Act, the words "by a revenue officer of a gazetted rank appointed by the Provincial Government in this behalf" shall be omitted.

Amendment of section 52 of Orissa Act IV of 1939.

4. In section 52 of the said Act, for sub-section (3), the following sub-sections shall be substituted, namely :—

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"(3) The power to make rules given by this section is subject to the condition of the rules being made after previous publication.

(4) All rules made under this section shall be published in the Gazette, and shall, unless some later date is appointed, come into force on the date of such publication.

(5) All rules made under this section shall be laid as soon as possible after they are made before the Orissa Legislative Assembly for a total period of 14 days, which may be comprised in one session or in two or more sessions, and shall be subject to such modifications as the Assembly may make during the said period."

Amendments to form part of Orissa Act IV of 1939 from its commencement.

5. The said Act shall be read and construed as if the amendments hereby enacted had formed part of the said Act from its commencement.

N.B.—After the Orissa Hindu Religious Endowment Act, 1939 had been printed, a new Act namely Orissa Act II of 1952 repealing the earlier Act was passed and the assent of the President thereto was given on 16th February, 1952.

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ORISSA ACT IV OF 1939.

The Orrissa Hindu Religious Endowments Act, 1939.

An Act to Provide for the better Administration and Governance of certain Hindu Religious Endowments.

Preamble. Whereas it is expedient to provide for the better administration and governance of certain Hindu religious endowments described hereunder ;

It is hereby enacted as follows :—

CHAPTER I.

Short title. 1. This Act may be called the Orissa Hindu Religious Endowments Act, 1939.

Extent. 2. (*a*) This Act extends to the whole of the Province of Orissa and applies, save as hereinafter provided, to all Hindu public religious endowments.

Explanation.—For the purposes of this Act, Hindu public religious endowments do not include Jain religious endowments.

Commencement. (*b*) It shall come into force on such date as the Provincial Government may, by notfication in the *Gazette*, direct.

Power to extend the operation of the Act to endowments. 3. The Provincial Government may, by notification, extend to any Jain or Buddhist religious endowment or to any public endowment of a charitable and religious nature the provisions of this Act, and of any rules framed thereunder, and may declare such extension to be subject to such restrictions and modifications as they think fit :

Provided that before issuing such notification the Provincial Government shall publish in the *Gazette* a notice of their intention to do so, fix a reasonable period for the persons interested in the endowments concerned to show cause against the issue of such notification and consider their objections, if any.

Repeal of enactments. Madras Act II of 1926. XX of 1863. Ben. Regn. XIX of 1810. XIV of 1920. 4. The Madras Hindu Religious Endowments Act, 1926, the Religious Endowments Act, 1863, the Bengal Charitable Endowments Public Buildings and Escheats Regulation, 1810 and the Charitable and the Religious Trusts Act, 1920 (hereinafter referred to as the said Acts), so far as they apply to the religi-

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ous endowments in Orissa, to which this Act applies, are hereby repealed.

Validity of action taken, notifications and orders issued under the repealed enactments.

5. (*i*) All action taken and all things done, the notifications issued and orders made under and in pursuance of the said Acts, shall be deemed to have been validly taken, done, issued or made.

(*ii*) All proceedings taken under the said Acts may be continued under this Act, in so far as they are not inconsistent with the provisions of this Act.

(*iii*) Any remedy by way of application, suit or appeal which is provided by this Act shall be available in respect of proceedings under the said Acts pendings at the time of the commencement of this Act as if the proceedings in respect of which the remedy is sought had been instituted under this Act.

Definitions.

6. In this Act, unless there is anything repugnant in the subject or context—

Collector.

(1) "Collector" shall include every officer who is authorised in this behalf to exercise the powers of a District Collector.

Commissioner.

(2) "Commissioner" means the commissioner appointed under section 7.

Court.

(3) "Court" means the Civil Court of the lowest grade under the Bengal, Agra and Assam Civil Courts Act, 1887, within whose local limits the commissioner exercises jurisdiction or a math or a temple is situated.

District Collector.

(4) "District Collector" shall mean the chief local officer in charge of the revenue administration of a district.

Excepted temple.

(5) "excepted temple" means and includes a temple, the right of succession to the office of trustee or the offices of all the trustees (where there are more trustees than one) whereof has been hereditary, or the succession to the trusteeship whereof has been specially provided for by the founder.

Explanation.—No action taken in pursuance of the power conferred by clauses (*a*) and (*b*) of sub-section (*1*) of section 39 shall be deemed to have the effect of converting an excepted temple into a non-excepted temple.

Hereditary trustee.

(6) "hereditary trustee" means the trustee of a religious endowment, succession to whose office devolves by hereditary right or by nomination by the trustee for the time being, or is otherwise regulated

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by usage or is specially provided for by the founder, so long as such scheme of succession is in force.

Math. (7) "math" means an institution for the promotion of the Hindu religion presided over by a person whose duty is to engage himself in spiritual service or who exercises or claims to exercise spiritual headship over a body of disciples and succession to whose office devolves in accordance with the directions of the founder of the institution or is regulated by usage; and includes places of religious worship other than a temple and also places of instruction or places for the maintenance of *vidyarthies* or places for rendering charitable or religious services in general which are or may be appurtenant to such institution.

Non-hereditary trustee. (8) "non-hereditary trustee" means a trustee who is not a hereditary trustee.

Notified temple. (9) "notified temple" means a temple notified by the Provincial Government under section 42.

Person having interest. (10) "person having interest" means—

(*a*) in the case of a *math*, a disciple of the math or a person of the religious persuasion to which the math belongs ; and

(*b*) in the case of a temple a person who is entitled to attend at the performance of worship or service in the temple or who is in the habit of attending such performance or of partaking in the benefit of the distribution of gifts thereat.

Prescribed. (11) "prescribed" means prescribed by the Provincial Government by rules made under this Act.

Religious endowment. (12) "religious endowment" or "endowment" means all property belonging to, or given or endowed for the support of maths or temples or for the performance of any service or charity connected therewith whether or not such maths or temples be in ruins or the worship in connection with them is discontinued either temporarily or permanently and includes the premises of maths or temples.

Explanation.—Where an endowment has been made or property given for the support of an institution which is partly of a religious and partly of a secular character or for the performance of any service or charity connected therewith, or where an endowment made or property given is appropriated partly to religious and partly to secular uses, such endowment or

CENTRAL LIBRARY

property or the income therefrom shall be deemed to be a religious endowment and its administration shall be governed by the provisions of this Act.

(13) "temple" means a place, by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit of, or used as of right by, the Hindu community, or any section thereof, as a place of religious worship and also includes any cultural institution or *mandab* or library connected with such a place of public religious worship. Temple.

(14) "trustee' means a person, by whatever designation known, in whom the administration of a religious endowment is vested and includes any person who is liable as if he were a trustee. Trustee.

CHAPTER II.

Commissioner.

7. (1) The Provincial Government may, by notification, appoint a person who professes the Hindu religion and who is a member of either the Judicial or the Executive Service to be a commissioner of endowments and he shall be deemed to be holding an office in the service of the Crown in India. Appointment of commissioner.

(2) The Commissioner shall cease to hold his office if he ceases to profess the Hindu religion.

8. (1) The Commissioner shall devote his whole time and attention to the duties of his office and shall be under the general control of the Provincial Government. Remuneration of commissioner.

(2) The Commissioner shal receive out of the funds of the endowments such salary as the Provincial Government may fix.

9. The Commissioner shall have an office at such place as the Provincial Government may fix for the transaction of business. Office of Commissioner.

10. (1) The Provincial Government may, from time to time, determine the number, designations, grades and scales of salary or other remuneration of the officers and servants who may be required for the purpose of enabling the Commissioner to discharge his powers and duties under the Act. Officers and servants of Commissioner, their appointment and punishment.

CENTRAL LIBRARY

(2) Subject to such control as may be prescribed, the commissioner shall have the power to appoint and transfer such officers and servants and may fine, reduce, suspend, remove or dismiss them for breach of rules or discipline, for carelessness, unfitness, neglect of duty or misconduct or other sufficient cause.

Powers and duties of Commissioner.

11. Subject to the provisions of this Act and of any rules made under it and of any scheme settled or deemed to be a scheme settled under this Act, the general superintendence of all religious endowments shall vest in the commissioner and he may do all things which are reasonable and necessary to ensure that maths and temples are properly maintained and that all religious endowments are properly administered.

Explanation.—The general powers of superintendence of the commissioner shall include the power to pass such interim orders as he deems necessary in the interests of the proper maintenance of a math or temple or the administration of a religious endowment.

CHAPTER III.

Religious Endowments in General.

Preparation of register of endowments.

12. (1) For every math and temple a register shall be maintained by the commissioner showing :—

(*a*) the names of past and present trustees and particulars as to the custom, if any, regarding succession to the office of trustee ;

(*b*) particulars of all endowments of the math or temple, and all title-deeds and other documents relating thereto ;

(*c*) particulars of the scheme of administration and of the *dittam* or scale of expenditure ;

(*d*) the names of all officers to whom any salary, emolument or perquisite is attached and the nature, time and conditions of service in each case ;

(*e*) the jewels, gold, silver, precious stones, all vessels and utensils and other mov-

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ables belonging to the institution, with their estimated value ; and

(*f*) such other particulars as may be prescribed.

(2) The register shall be prepared, verified and signed by the trustee of the math or temple or by his authorised agent and submitted by him to the commissioner within such period after the commencement of this Act as the commissioner may fix.

(3) The commissioner may, after receiving the register from a trustee, make such inquiry as he may consider necessary and direct that the register be approved with such alterations, omissions or additions as he thinks fit to order.

(4) A copy of the register as approved by the commissioner shall be furnished to the trustee.

Annual verification of register.

13. (1) The trustee or his authorised agent shall annually scrutinise the entries in the register and shall submit to the commissioner for his approval a vertified statement showing the alterations, omissions or additions required therein.

(2) The commissioner may, on receipt of the statement, make such inquiry as he thinks necessary and the commissioner may, by order, direct the alterations, ommissions or additions which should be made in the register.

(3) A copy of the order under sub-section (2) shall be communicated to the trustee and he shall carry out the alterations, omissions or additions ordered by the commissioner in the copy of the register kept by him.

Care required of trustee and his powers.

14. (1) The trustee of every religious endowment is bound to administer its affairs and to apply the funds and properties of such endowment in accordance with the terms of the trust, the usage of the institution and all lawful directions which a competent authority may issue in respect thereof, and as carefully as a man of ordinary prudence would deal with such affairs, funds or properties if they were his own.

(2) A trustee shall, subject to the provisions of this Act, be entitled to exercise all powers incidental to the provident and beneficial management of the religious endowment and to do all things necessary for the due performance of the duties imposed on him.

CENTRAL LIBRARY

Power of trustee of math or temple over tructees of specific endowments.

15. The trustee of specific endowments made for the performance of any service or charity connected with a math or temple or persons owning property burdened with the performance of any such service or charity shall perform such service or charity subject to the general superintendence of the trustee of the math or temple and shall obey all lawful orders issued by him.

Hereditary trustee.

16. (1) When a vacancy occurs in the office of hereditary trustee of a religious endowment and there is a dispute respecting the right of succession to such office, or when such vacancy cannot be filled up immediately, or when a hereditary trustee is a minor and has no legally constituted guardian fit and willing to act as such or, there is a dispute respecting the person who is entitled to act as such guardian or, when a hereditary trustee is by reason of unsoundness of mind or other physical infirmity unable to discharge the functions of the trustee, the commissioner may appoint a fit person to discharge the functions of the trustee of such endowment until another trustee succeeds to the office or the disability of the trustee ceases to exist, as the case may be.

Madras Act I of 1902. Bengal Act IX of 1879. XXIV of 1899.

Nothing in this sub-section shall be deemed to affect anything contained in the Madras Court of Wards Act, 1902, the Court of Wards Act, 1879, or the Central Provinces Court of Wards Act, 1899.

(2) In making an appointment under sub-section (1) the commissioner shall have due regard to the claims of disciples, if any, in the case of maths, and of members of the family, if any, entitled to the succession, in the case of temples.

(3) The person so appointed shall be entitled to exercise all the powers which a trustee could exercise in relation to such endowment.

Appointment and punishment of servants of temples.

17. (1) All office-holders and servants attached to a temple or in receipt of any emolument or perquisite from the temple shall be under the orders and control of the trustee ; and the trustee may fine, suspend, remove or dismiss any of them for breach of trust, incapacity, disobedience of lawful orders, neglect of duty, misconduct or other sufficient cause :

Provided that the Provincial Government may, in respect of any specified hereditary office-holder or servant or class of hereditary office-holders or

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servants and subject to the provisions of section 61, by order restrict and place under such control as they may think fit the exercise by the trustee of his powers of punishment under this sub-section.

(2) Any hereditary office-holder or servant of a temple punished by a trustee under sub-section (1) may, within such time as may be prescribed, appeal to the commissioner and his decision shall be final but in cases where the punishment is of dismissal, removal or suspension for a period of six months or more the office-holder or servant of the temple so punished shall have such right of appeal only if he has complied with the order of punishment and has handed over the properties of the endowment in his charge to the trustee or any person appointed by him on the date of the order of punishment or within a reasonable time after it.

Enforcement of service when endowment is a charge on property.

18. Where an endowment for the performance of a charity or service connected with a temple consists merely of a charge on property or other emoluments not so charged and there is failure in the due performance of the charity or service by the person responsible, the trustee of the temple may require the person in possession of the property on which the endowment is a charge or the person in possession of emoluments not so charged, as the case may be, to pay to the trustee the expenses incurred or likely to be incurred in causing the charity or service to be performed otherwise. In default of such person making the payment as required by the trustee the Court shall, on the application of the trustee, pass an order for the recovery of the amount and such order may be enforced as if it were a decree of such Court :

Provided that where the person in possession of the property on which the endowment is a charge or the person in possession of emoluments not so charged, as the case may be, is not the person responsible in law for the performance of the charity or service and the amount referred to in this section is recovered from the person in possession, the Court shall, on the application of such person, pass an order for the recovery of the amount from the person responsible in law and such order may also be enforced as if it were a decree of such Court.

CENTRAL LIBRARY

Enfranchisement of freeing of lands, etc., held by a devadasi on condition of service in a temple.

19. (1) (*a*) (*i*) Where the remuneration for any service to be performed by a *devadasi* in a temple consists of lands granted or continued in respect of, or annexed to, such service by the Government, the Provincial Government shall enfranchise the said lands from the condition of service by the imposition of quit-rent.

(*ii*) Where the remuneration for such service consists of an assignment of land revenue so granted or continued, the Provincial Government shall enfranchise such assignment of revenue from the condition of service :

Provided that where, at the time when proceedings are taken under this sub-section the *devadasi* is herself the owner of the lands in respect of which the assignment of revenue has been made, enfranchisement shall be effected and quit-rent imposed in the manner laid down in sub-clause (*i*).

(*iii*) Where the remuneration for such service consists in part of lands and in part of an assignment of land revenue, enfranchisement of the lands shall be effected in the manner laid down in sub-clause (*i*) and of the assignment of land revenue in the manner laid down in sub-clause (*ii*).

Explanation.—For the purposes of this clause a grant shall be deemed to consist of an assignment of land revenue in all cases in which the *devadasi* herself is not, at the time specified in the proviso to sub-clause (*ii*), the owner of the lands in question.

(*b*) Enfranchisement under clause (*a*) shall be effected in accordance with such rules as the Provincial Government may make in this behalf and shall take effect as and from such date as the Provincial Government may fix.

(2) Where the remuneration for such service consists, in whole or in part, of lands or produce of lands not falling under sub-section (1), the Provincial Government shall direct the Collector to determine the amount of rent payable on the lands or the produce in question. The Collector shall thereupon after giving notice to the parties concerned and holding such inquiry as may be prescribed by the Provincial Government by an order determine the amount of rent, and in doing so, he shall have due regard to—

CENTRAL LIBRARY

(*a*) the rent payable by the tenant for lands of a similar description and with similar advantages in the same village or neighbouring villages ; and

(*b*) the improvements, if any, effected by the *devadasi*, in respect of the lands.

Such order shall be communicated to the parties concerned and also published in the manner prescribed.

(3) The amount of rent fixed by the Collector under sub-section (2) may be questioned by petition presented to the Revenue Commissioner within three months of the date of the publication of the order under the said sub-section but, subject to the result of such petition, the order of the Collector fixing the amount of rent under sub-section (2) shall be final and shall not be liable to be contested in any Court of law :

Provided, however, that the Revenue Commissioner shall have power on sufficient grounds to entertain a petition presented after the expiration of the period of three months.

(4) While determining the rent under sub-section (2) the Collector shall fix a date from which the order shall take effect and such lands or produce shall be deemed to have been freed from the condition of service as and from the date so fixed.

(5) No obligation to render any service relating to any temple to which any *devadasi* may be subject by reason of any grant of land or assignment of land revenue or produce derived from land, shall be enforceable on such land, assignment or produce being enfranchised or freed, as the case may be, in the manner hereinbefore provided.

(6) No order passed under sub-sections (1), (2) and (3) shall operate as a bar to the trial of any suit or issue relating to the right to enjoy the land or assignment of land revenue or produce derived from the land, as the case may be.

(7) (*a*) The quit-rent imposed under sub-section (1) shall be payable to the temple concerned.

(*b*) The assignment of land revenue enfranchised under sub-section (1) or the rent fixed under sub-sections (2) and (3), as the case may be, shall be payable to the *devadasi* concerned during her lifetime and after her death to the temple concerned.

CENTRAL LIBRARY

(8) For the purpose of this section '*devadasi*' shall mean any Hindu unmarried female, who is dedicated to a temple.

Resumption and regrant of inam granted for the performance of any charity or service connected with a math or temple in case of alienation of the inam or of failure to perform the charity or service.

20. (1) Any exchange, gift, sale or mortgage, and any lease for a term exceeding five years of the whole or any portion of any *inam* or *maufi* or *shebait* or *jagir* granted for the performance of a charity or service connected with a math or temple and made, confirmed or recognized by the British Government, shall be null and void.

(2) (*a*) The Collector may, on his own motion, or on the application of the trustee of the *math* or temple or of the commissioner or of any person having interest in the math or temple who has obtained the consent of such trustee, or commissioner, by order, resume the whole or any part of any such *inam* or *maufi* or *shebait* or *jagir* on one or more of the following grounds, namely :—

(*i*) that the holder of such *inam* or *maufi* or *shebait* or *jagir* or part has made an exchange, gift, sale or mortgage of the same or any portion thereof or has granted a lease of the same or any portion thereof for a term exceeding five years, or

(*ii*) that the holder of such *inam* or *maufi* or *shebait* or *jagir* or part has failed to perform or make the necessary arrangements for performing, in accordance with the custom or usage of such math or temple the charity or service for performing which the *inam* had been made, confirmed or recognised by the British Government or any part of the said charity or service as the case may be, or

(*iii*) that the *math* or temple has ceased to exist or the charity or service in question has in any way become impossible of performance.

When passing an order under this clause, the Collector shall determine whether such *inam* and *maufi* or *shebait* or *jagir* or the *inam* comprising such part, as the case may be, is a grant of both the *melvaram* (landlord's interest) and the *kudivaram* (cultivators' interest) or only of the *melvaram* (landlords' interest).

CENTRAL LIBRARY

(*b*) Before passing an order under clause (*a*), the Collector shall give notice to the trustee, to the commissioner, to the *inamdar* concerned or where only a part of the *inam* is affected, to the holder of such part as well as to the holder or holders of the other part or parts and to the alienee, if any, hear their objections, if any, and hold such inquiry as may be prescribed.

(*c*) A copy of every order passed under clause (*a*) shall be communicated to each of the persons and bodies mentioned in clause (*b*), and shall also be published in the manner prescribed.

(*d*) (*i*) Any party aggrieved by an order of the Collector under clause (*a*) may appeal to the District Collector within such time as may be prescribed and on such appeal the District Collector may, after giving notice to each of the persons and bodies mentioned in clause (*b*) and after holding such inquiry as may be prescribed, pass an order confirming, modifying or cancelling the order of the Collector.

(*ii*) The order of the District Collector on such appeal, or the order of the Collector under clause (*a*) where no appeal is preferred under sub-clause (*i*) to the District Collector within the time prescribed, shall be final :

Provided that where there has been an appeal under sub-clause (*i*) and it has been decided by the District Collector or where there has been no appeal to the District Collector and the time for preferring an appeal has expired any party aggrieved by the final order of the District Collector or the Collector, as the case may be, may file a suit in a Civil Court for determining whether the inam comprises both the melvaram and the kudivaram or only the melvaram. Such a suit shall be instituted within six months from the date of the order of the District Collector on appeal where there has been an appeal under sub-clause (*i*) or from the date of expiry of the period prescribed under sub-clause (*i*) for an appeal to the District Collector, in a case where there has been no appeal.

(*e*) Except as otherwise provided in clause (*d*) an order of resumption passed under this section shall not be liable to be questioned in any Court by suit or otherwise.

CENTRAL LIBRARY

(*f*) Where any *inam* or part of an *inam* is resumed under this section, the Collector or the District Collector, as the case may be, shall, by order, regrant such inam or part—

(*i*) as an endowment to the *math* or temple concerned, or

(*ii*) in case of resumption on the ground that the *math* or temple has ceased to exist or that the charity or service in question has in any way become impossible of performance, as an endowment to the commissioner, for appropriation to such religious, educational or charitable purposes not inconsistent with the objects of such *math* or temple, as the commissioner may direct.

(*g*) The order of re-grant made under clause (*f*) shall, on application made to the Collector within the time prescribed, be executed by him in the manner prescribed.

(*h*) Nothing in this section shall affect the operation of section 19.

Maintenance of accounts and appointments of auditors.

21. (1) The commissioner and the trustee of any *math* or temple or of any religious endowment attached to any *math* or temple shall keep regular accounts for receipts and disbursements.

(2) Such account shall be audited annually or at such other intervals as may be prescribed, by auditors appointed by the Provincial Government. Auditors so appointed shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

XLV OF 1860.

Submission of audit report.

22. After completing the audit the auditor shall submit a report—

(*a*) to the Provincial Government in the case of the accounts of the commissioner, and

(*b*) to the commissioner in the case of the accounts of a *math* or temple.

Contents of audit report.

23. (1) The report of the auditor shall among other things specify all cases of irregular, illegal, or improper expenditure, or of failure to recover moneys or other property due to the institution or of loss or waste of money or other property of the institution caused by neglect or misconduct.

(2) The auditor shall also report on any other

CENTRAL LIBRARY

matter which the commissioner may require in respect of any specified religious endowment.

Recovery of cost of audit.

24. (1) Notwithstanding any provision to the contrary contained in the scheme, if any, settled or deemed to be settled under this Act, the cost of auditing the accounts of any *math* or temple or any religious endowment attached to any *math* or temple, shall be payable out of the fund of such *math*, temple, or religious endowment. Such cost shall be fixed by the commissioner and shall not exceed one and a half per centum of the gross income of the *math*, temple or religious endowment concerned and shall be paid by the trustee thereof within the time allowed, and in accordance with the directions issued, by the commissioner, subject to any rules which the Provincial Government may prescribe in this behalf.

(2) If such cost is not paid within the time allowed, it shall be recovered in the manner provided in sub-sections (2), (3) and (4) of section 51 as if the default in such payment were a default in the payment of the amounts specified in sub-section (1) of that section. The protection conferred by sub-section (5) of the said section on the Crown and servants of the Crown shall also be available to them in respect of anything in good faith done or intended to be done in pursuance of this sub-section.

CHAPTER IV.

Temples.

Chapter not to apply to excepted temples.

25. The provisions of this Chapter shall not apply to, excepted temples or the trustees thereof.

Trustee to be Hindu.

26. No person may succeed, or be appointed to, the office of trustee of a temple unless he professes the Hindu religion.

Non-hereditary trustee.

27. (1) Subject to the provisions of sub-section (4) the number of non-hereditary trustees for any temple shall be fixed by the commissioner, but shall not exceed three.

(2) Non-hereditary trustees shall be appointed by the commissioner and in making such appointments the commissioner shall have due regard to the claims

CENTRAL LIBRARY

of persons belonging to the religious denomination for whose benefit the temple concerned is chiefly maintained.

(3) A non-hereditary trustee shall hold office for five years from the date of the order appointing him, unless in the meanwhile he is removed or dismissed, or his resignation is accepted, by the commissioner or he ceases otherwise to be a trustee.

(4) Every non-hereditary trustee lawfully holding office on the date of commencement of this Act shall be deemed to have been duly appointed trustee under this Act on such date, but shall be entitled to hold office only for one year from such date.

(5) The Provincial Government may, by notification, remove from office any member of an existing Temple Committee constituted under the provisions
XX of 1863. of the Religious Endowments Act, 1863 ; and until so removed, the members of such Committee shall be deemed to be non-hereditary trustees lawfully holding office on the date of commencement of this Act within the meaning of the next preceding sub-section :

Provided that, pending any such notification, the commissioner may, in the interest of the proper maintenance of the temple or administration of a religious endowment attached thereto, pass an interim order suspending any member of such Committee.

Trustee to obey orders of commissioner.

28. The trustee of a temple shall be bound to obey all orders issued under the provisions of this Act by the commissioner.

Removal and dismissal of trustees.

29. (1) The commissioner may suspend, remove or dismiss the trustee of a temple—

(*a*) for persistent default in the submission of budgets, accounts, reports or returns, or

(*b*) for wilful disobedience of lawful orders issued by the commissioner, or

(*c*) for any malfeasance, misfeasance, breach of trust, or neglect of duty in respect of the trusts, or

(*d*) for any misappropriation of, or improper dealing with, the properties of the temple of which he is trustee, or

(*e*) for unsoundness of mind or other physical infirmity which unfits him for discharging the functions of a trustee, or

CENTRAL LIBRARY

(*f*) for continued absence without the permission of the commissioner for a period of six months from the jurisdiction of the Munsif's Court within which the temple is situated.

(2) When the commissioner proposes to take action under sub-section (1) he shall frame charges against the trustee concerned and give him an opportunity of explanation, of testing the evidence in his favour and may place the trustee under suspension pending the disposal of the charges framed. The order of suspension, removal or dismissal shall state the charges framed against the trustee, his explanation and the finding of the commissioner on each charge with the reasons therefor.

(3) A trustee suspended, removed or dismissed under this section may, within three months of the date of the communication of the order of suspension, removal or dismissal, appeal to the Court against such order.

(4) The order of the commissioner under this section shall, when no appeal is preferred under sub-section (3), be final ; and when such appeal is preferred, the order of the Court shall be final.

Disqualification of trustees.

30. (1) A non-hereditary trustee shall cease to hold his office if he—

(*a*) is sentenced by a court to transportation or to imprisonment for a period of more than six months (such sentence not having been cancelled or reduced to a period of not more than six months or the offence not having been pardoned) :

Provided that the Provincial Government may direct that such sentence shall not operate as a disqualification ;

(*b*) applies to be adjudicated or is adjudicated a bankrupt or insolvent ; or

(*c*) ceases to profess the Hindu religion.

(2) A hereditary trustee shall cease to hold his office if he ceases to profess the Hindu religion.

(3) If a hereditary trustee becomes subject to any of the disqualifications described in clause (*a*) or clause(*b*) of sub-section (1), the commissioner may supersede him and appoint a fit person to administer

CENTRAL LIBRARY

the temple until the disability of the trustee ceases to exist or another trustee succeeds to the office.

(4) The commissioner shall, in cases of dispute or doubt, determine whether a trustee is disqualified under this section and his decision shall be final except in the case of determination of disqualification under sub-section (2). Where the commissioner determines a case of disqualification under sub-section (2) such order of determination as to disqualification shall be liable to appeal to the District Court within whose jurisdiction the temple is situated within three months from the date of the said order, and the order of the District Court, when an appeal is preferred, shall be final and, when no such appeal is preferréd, the order of the commissioner shall be final.

Fixing of standard scales of expenditure in temples.

31. Subject to the rules made by the Provincial Government under this Act and to the provisions of any scheme settled or deemed to be a scheme settled under this Act, which shall be subject to the said rules made by the Provincial Government,—

(1) the trustee of a temple may from time to time submit to the commissioner proposals for fixing the *dittam* or scale of expenditure in the temple and the amounts which should be allotted to the various objects or ceremonies connected with such temple or the proportions in which the income or other property of the temple may be applied to such objects or ceremonies ;

(2) the trustee shall publish such proposals at the temple and in such other manner as the commissioner may direct, together with a notice stating that, if within one month from the date of such publication any objection or suggestion is received from any person having interest, the commissioner shall consider such objection or suggestion ;

(3) after the expiry of the period fixed under sub-section (2) the commissioner shall consider the objections or suggestions that may have been received and may pass such orders as he thinks fit on the proposals ;

(4) after passing orders as provided in sub-section (3), the commissioner shall submit

CENTRAL LIBRARY

the *dittam* or the scale of expenditure as fixed by him to the Provincial Government which may approve of it without modification or with such modification as it deems fit and the *dittam* or scale of expenditure so approved by the Provincial Government shall be final ;

(5) the *dittam* or scale of expenditure for the time being in force in a temple shall not be altered by the trustee except in accordance with the procedure laid down in this section.

Budget of temples.

32. (1) The trustee of every temple shall in each year submit to the commissioner before such date and in such form as the commissioner may require, a budget showing the probable receipts and disbursements of the temple and the endowments connected therewith during the following year.

(2) Every such budget shall make adequate provision for the *dittam* or scale of expenditure for the time being in force and the due discharge of all liabilities in respect of loans.

(3) The commissioner may, within such time after the receipt of the budget as he may fix, direct the trustee to make such alterations, omissions or additions in the budget as he may think fit and the budget as approved by the commissioner with such modifications as he deems proper shall be final.

Scheme of administration of endowments of a temple.

33. (1) When the commissioner is satisfied that in the interest of the proper administration of the endowments of a temple, a scheme of administration should be settled, he shall consult in the prescribed manner the trustee and the persons having interest. If, after such consultation, the commissioner still considers that the settlement of a scheme of administration is necessary he shall make a report to the Provincial Government, which shall appoint one or more persons in that behalf, who shall be officers in the service of the Crown, and the said person or persons and the commissioner shall hold the necessary inquiry and, by order, settle a scheme of administration for the endowments of such temple.

A scheme settled under this sub-section may contain provision for—

CENTRAL LIBRARY

(*a*) fixing the number of non-hereditary trustees ;

(*b*) removing any existing trustee or trustees, whether hereditary or non-hereditary ;

(*c*) appointing a new trustee or trustees in addition to or in the place of any existing trustee or trustees whether hereditary or non-hereditary :

Provided that where provision is made in the scheme for the removal of a hereditary trustee provision shall also be made therein for the person next in succession who is qualified for being appointed as trustee ;

(*d*) appointing or directing the appointment of a paid executive officer, who shall be a person professing the Hindu religion, on such salary as may be fixed by the Provincial Government, to be paid out of the trust funds, and defining the powers and duties of such officer ; or

(*e*) defining the powers and duties of the trustee or trustees.

Explanation.—The power to settle a scheme under this sub-section shall be deemed to include a power to settle a scheme for any specific endowment or endowments attached to a temple.

(2) The commissioner may, for good and sufficient cause, suspend, remove or dismiss any executive officer appointed in pursuance of a scheme settled under sub-section (1) or direct the removal of such officer.

(3) A scheme settled under sub-section (1) may be modified or cancelled in the manner provided in that sub-section.

(4) Every order under this section shall be published in the prescribed manner.

The trustee or any person having interest may within six months of the date of such publication institute a suit in the Court to modify or set aside such order. Subject to the result of such suit every such order shall be final and binding on the trustee.

(5) Any scheme of administration which has been settled under this section or which under section 57 is deemed to be a scheme settled under this Act may, at any time for sufficient cause, be modified or

CENTRAL LIBRARY

cancelled by the Court in a suit instituted by the commissioner or the trustee or any person having interest, but not otherwise.

Filling up of vacancies among office-holders or servants.

34. (1) Vacancies amongst the office-holders or servants of a temple shall be filled up by the trustee in cases where the office or service is not hereditary.

(2) In cases where the office or service is hereditary, the next in the line of succession shall be entitled to succeed :

Provided that if there is a dispute respecting the right of succession to such office or service, or in cases where such vacancy cannot be filled up immediately, or where the person entitled to succeed is a minor without a legally constituted guardian fit and willing to act as such, or where the hereditary office-holder or servant is by reason of unsoundness of mind or other physical infirmity unable to discharge the functions of the office or perform the service, the trustee may appoint a fit person to discharge the duties of the office or perform the service, until another person succeeds to the office or service, or the disability of the office-holder or servant ceases to exist, as the case may be.

(3) In making an appointment under the proviso to sub-section (2), the trustee shall have due regard to the claims of members of the family, if any, entitled to the succession.

Trustees to furnish accounts, etc., to commissioner.

35. The trustee of every temple shall furnish such accounts, returns, reports or other information relating to the administration of the temple in his charge and at such time and in such form as the commissioner may require.

Inspection by commissioner or other officer of endowments.

36. The commissioner or any other officer deputed by him in this behalf may inspect all movable and immovable property belonging to, and all records, correspondence, plans, accounts and other documents relating to temple, and the trustee of such temple and all officers and servants working under him shall afford to the commissioner or such officer such assistance as may be necessary.

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CHAPTER V.

Maths and Excepted Temples.

Submission of budgets and annual accounts.

37. The trustee of every *math* and excepted temple shall, in each year, submit to the commissioner before such date and in such form as the commissioner may require—

(*a*) a budget showing the probable receipts and disbursements of the following year, and

(*b*) a statement of the actual receipts and disbursements of the previous year.

Inquiry by commissioner into mismanagement by trustees.

38. When the commissioner has reason to believe that the trustee of a *math* or excepted temple has been mismanaging the endowments of such math or temple or, has been spending or alienating them for improper purposes or, when not less than twenty persons having interest make an application to the commissioner stating that in the interests of the proper administration of such endowments a scheme of administration should be settled, the commissioner may hold an inquiry which shall be conducted in such manner as may be prescribed :

Provided that all such enquiries shall be held by the commissioner jointly with one or more persons in the service of the Crown appointed by the Provincial Government in this behalf.

Schemes for maths and excepted temples.

39. (1) If, after making the inquiry referred to in section 38, the commissioner and the person or persons who held the inquiry are satisfied that the trustee concerned has mismanaged the endowments of such *math* or temple or has spent or alienated them for improper purpose and, that, in the interests of the proper administration of such endowments, a scheme of administration should be settled, the commissioner and the said person or persons may, after consulting in the prescribed manner the trustee and the persons having interest, by order, settle a scheme of administration for the endowments connected with such *math* or temple.

A scheme settled under this sub-section may contain provision for—

(*a*) fixing the number of non-hereditary trustees ;

(*b*) appointing a new trustee or trustees in

CENTRAL LIBRARY

addition to the existing trustee or trustees ;

(*c*) associating one or more persons with the trustee or trustees or constituting a separate body, for the purpose of participating or assisting in the whole or any part of the administration of the endowments connected with such *math* or temple :

Provided that where the commissioner considers it necessary to associate any person or persons with the trustee or trustees of a *math* or to constitute any separate body for participating or assisting in the administration of a *math*, such person or persons or the members of such body shall be chosen from persons having interest in such *math* ;

(*d*) appointing or directing the appointment of a paid executive officer who shall be a person professing the Hindu religion, on such salary as may be fixed by the Provincial Government to be paid out of the trust funds, and defining the powers and duties of such officer ; or

(*e*) defining the powers and duties of the trustee or trustees.

Explanation.—The power to settle a scheme under this sub-section shall be deemed to include a power to settle a scheme for any specific endowment or endowments attached to a *math* or temple.

(2) The commissioner may, for good and sufficient cause, suspend, remove or dismiss any executive officer appointed in pursuance of a scheme settled under sub-section (1) or direct the removal of such officer.

(3) A scheme settled under sub-section (1) may be modified or cancelled in the manner provided in that sub-section.

(4) Every order under this section shall be published in the prescribed manner.

The trustee or any person having interest may, within six months of the date of such publication, institute a suit in the Court to modify or set aside such order.

CENTRAL LIBRARY

Finality of order under section 39.

40. Every order under section 39 shall, subject to the result of any suit which may be instituted under sub-section (4) of that section, be final and binding on the trustee and all persons having interest.

Modification or cancellation of schemes.

41. Any scheme of administration which has been settled under section 39 or which under section 57 is deemed to be a scheme settled under this Act may, at any time, for sufficient cause be modified or cancelled by the Court in a suit instituted by the commissioner or the trustee or any person having interest but not otherwise.

CHAPTER VI.

Notified Temples.

Power of Provincial Government to notify temple or endowment to be subject to the Provisions of this Chapter.

42. (1) (*a*) The commissioner may, by notice published in the prescribed manner, call upon the trustee and all other persons having interest in a temple or in any specific endowment attached to a temple to show cause why such temple or endowment should not be notified to be subject to the provisions of this Chapter.

(*b*) Such notice shall state the reasons for the action proposed, and specify a reasonable time, not being less than one month from the date of the issue thereof, for showing such cause.

(2) (*a*) The trustee or any person having interest in the temple or endowment may, thereupon, prefer any objection he may wish to make to the issue of a notification as proposed.

(*b*) Such objection shall be in writing and shall reach the commissioner before the expiry of the time specified in the notice aforesaid or within such further time as may be granted by the commissioner in that behalf.

(3) Where no such objection has been received within the time specified in the notice issued under sub-section (1) or within such further time as may be granted by the commissioner, the Provincial Government may, by notification published in the *Gazette*, declare the temple or endowment to be subject to the provisions of this Chapter.

(4) Where any such objection or objections has

CENTRAL LIBRARY

or have been received within the time specified in the notice issued under sub-section (1) or within such further time as may be granted by the commissioner, the commissioner and one or more persons who are officers in the service of the Crown appointed by the Provincial Government in this behalf, shall hold an inquiry into the objection or objections in the manner prescribed, and decide whether the temple or endowment concerned should be notified to be subject to the provisions of this Chapter or not, and the Provincial Government may, by notification published in the *Gazette*, declare the temple or endowment to be subject to the provisions of this Chapter.

Scheme to cease to apply to notified temple or endowment.

43. On the publication of a notification in respect of any temple or endowment under section 42 the scheme of administration, if any, settled for such temple or endowment by any Court or by the commissioner and the person or persons in the service of the Crown as hereinbefore provided, as the case may be, and all rules, if any, framed under such a scheme shall cease to apply to such temple or endowment.

Appointment of executive officer for notified temple or endowment and his powers and duties.

44. (1) For every notified temple or endowment, the commissioner shall appoint an executive officer whose salary shall be fixed by the Provincial Government and who shall be a person professing the Hindu religion as soon as may be after the publication of the notification under section 42 in respect of such temple or endowment.

(2) The executive officer shall hold office for such period as may be fixed by the commissioner in that behalf and he shall exercise such powers and perform such duties as may be vested in or assigned to him by the commissioner.

Explanation.—The commissioner shall define the powers and duties which may be exercised and performed, respectively, by the executive officer and the trustee, if any, of the notified temple or endowment. The executive officer shall for purposes of section 59 be deemed to be a person appointed to discharge the functions of a trustee under this Act.

(3) The executive officer shall be paid such salary and allowances as may be determined by the Provincial Government from the funds of the notified temple or endowment.

(4) The commissioner may, for good and suffici-

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ent cause, suspend, remove or dismiss the executive officer.

Sections 33, 38 and 39 not to apply to notified temple or endowment.

45. Sections 33, 38 and 39 shall cease to apply to such temples and endowments as are notified under section 42.

CHAPTER VII.

Application of Endowment Funds.

Authority of trustee to incur expenditure on health, etc., of pilgrims and worshippers.

46. The trustee of a *math* or temple may, out of the funds of the endowments in his charge, after satisfying adequately the purposes of the endowments, incur expenditure on arrangements for securing the health, safety or convenience of disciples, pilgrims or worshippers resorting to such *math* or temple :

Provided that the commissioner may, for reasons to be set forth in writing, restrict and place under such control as he may think fit the exercise by the trustee of his discretion under this section.

Cypres application of endowment or surplus.

47. (1) The commissioner may, after holding an inquiry in such manner as may be prescribed by order, declare that the purpose of a religious endowment has from the beginning been, or has subsequently become, impossible of realisation or that the machinery for effectuating the original purposes of the endowment has failed or no longer exists or, that after satisfying adequately the purposes of the endowment and after setting apart a sufficient sum for the repair and renovation of the buildings connected with the *math* or temple or the endowments attached thereto there is a surplus which is not required for such purposes ; and may, by such order, direct that the amount of the endowment or such surplus as is declared to be available, as the case may be, be appropriated to religious, educational or charitable purposes :

Provided that in the case of a temple founded and maintained by a community the amount of the endowment or the surplus shall, as far as possible, be utilized for the benefit of the community for the purposes mentioned above.

(2) It shall be competent to the commissioner when giving a direction under sub-section (1) to determine what portion of such amount or surplus

CENTRAL LIBRARY

shall be retained as a reserve fund for the *math* or temple and to direct the remainder to be appropriated to the purposes specified in that sub-section.

(3) The commissioner may at any time by order and in the manner provided in sub-section (1) modify or cancel an order passed under that sub-section.

(4) The order of the commissioner under this section shall be published in the prescribed manner. The trustee or any other person having interest may within six months of the date of such publication institute a suit in the Court to modify or set aside such order.

Subject to the result of such suit the order of the commissioner shall be final and binding on the trustee and all persons having interest.

(5) Any decision of the Court under this section may, at any time, for sufficient cause be modified or cancelled by the Court in a suit instituted by the commissioner or the trustee or any person having interest but not otherwise.

CHAPTER VIII.

Finance.

Recovery from endowment of expenses incurred by commissioner on legal proceedings.

48. All costs and expenses incurred in connection with legal proceedings in respect of any religious endowment to which the commissioner is a party may, notwithstanding anything contained in section 55, be payable out of the funds of such endowment.

Annual contribution from endowments to commissioner.

49. (1) Every *math* or temple and every specific endowment attached to a math or temple the annual income whereof exceeds Rs. 250 shall, for meeting the expenses of the commissioner and the officers and servants working under him, pay annually a contribution at the following rates :—

(*a*) at 1½ per cent of the annual income when it exceeds Rs. 250 but not Rs. 2,000 ;

(*b*) at 2 per cent of the annual income when it exceeds Rs. 2,000 but not Rs. 5,000; and

(*c*) at 3 per cent of the annual income when it exceeds Rs. 5,000.

CENTRAL LIBRARY

Explanation.—A *math* or temple or a specific endowment attached to a *math* or temple, the annual income whereof does not exceed Rs. 250 shall not be liable to pay any contribution for meeting the expenses of the commissioner :

Provided that the Provincial Goyernment may, for special reasons, increase or decrease the rates of contribution payable under this sub-section as they deem fit.

(2) Religious endowments, the administration of which is governed by a scheme settled under section 92 of the Code of Civil Procedure, 1908, shall notwithstanding anything to the contrary contained in such scheme, be liable to pay the contribution under this section.

V of 1908

Fund to be constituted by contributions under section 49.

50. There shall be a fund constituted by the contributions received under section 49. The Provincial Government shall pay annually to that fund a sum not less than Rs. 200 of which a sum not less than Rs. 100 shall be by way of grant and the balance by way of loan.

Assessment and recovery of costs, expenses and contributions.

51. (1) The costs, expenses and contributions payable under sections 48 and 49 shall be assessed on by a revenue officer of a gazetted rank appointed by the Provincial Government in this behalf and notified to the trustee of the *math*, temple or specified endowment concerned in the prescribed manner.

(2) (*a*) Such trustee shall, within one month of the date of his receipt of such notice or within such further time as may be granted by the commissioner, pay, out of the funds of the *math*, temple or endowment concerned, the amount so demanded to the commissioner or any person authorized by him ; and in default of such payment, the Collector of the district in which any property of the *math*, temple or endowment is situated shall, on a requisition made to him in the prescribed form, by the commissioner and subject to the provisions of this section, recover such amount as if it were an arrear of land revenue and the amount so recovered shall, after deduction therefrom of such percentage on account of the cost of recovery as the Provincial Government may, by general or special order from time to time determine, be paid to the commissioner.

CENTRAL LIBRARY

(*b*) On receipt of a requisition under clause (*a*) the Collector shall issue a notice to the trustee concerned—

(*i*) requiring him, within fifteen days from the service of such notice either to pay the amount mentioned in the requisition and specified in the notice or state, in writing his objections, if any thereto, and

(*ii*) stating that such amount or the amount found due from the trustee after his objections, if any, have been considered will be recovered as if it were an arrear of land revenue.

(*c*) If, within the period of fifteen days aforesaid no objection in writing is received by the Collector from the trustee, the Collector shall proceed to recover the amount specified in the notice as if it were an arrear of land revenue.

(*d*) If, within the said period, an objection in writing is received by the Collector from the trustee with regard either to his liability or to the amount specified in the notice, the Collector shall transmit such objection to the commissioner.

(*e*) The commissioner shall consider the objection so transmitted and communicate to the Collector his decision confirming, withdrawing or modifying the original demand.

(*f*) The Collector shall on being informed about the decision of the commissioner under clause (*e*) or after such time as he may grant, to enable the trustee to pay the demand in deserving cases, proceed to recover the amount, if any, due from the trustee under the decision so communicated as if it were an arrear of land revenue.

(3) The Collector may, on receipt of a requisition under clause (*a*) of sub-section (2), withhold the amount mentioned therein out of the *tasdik* or other allowance payable by the Provincial Government to the *math* or temple concerned and pay to the commissioner, the said amount after the expiry of the period of fifteen days referred to in clause (*b*) of sub-section (2) or in case an objection is received under clause (*d*) of that sub-section the amount, if any, due under the decision referred to in clause (*e*) thereof. Where the *tasdik* or other allowances is insufficient for the pur-

CENTRAL LIBRARY

pose, the Collector may withhold and pay as aforesaid the amount available and recover the balance as if it were an arrear of land revenue.

(4) Places of worship, including temples and tanks where *utsavams* are performed, idols, *vahanams* and jewels and such vessels and other articles of a *math* or temple as, in accordance with the usage of the temple or *math* concerned, are necesary for purposes of worship or ceremonial processions shall not be liable to be proceeded against in pursuance of sub-section (2) and (3).

(5) No suit, prosecution or other legal proceedings shall be entertained in any Court against the Crown or any servant of the Crown for anything in good faith done or intended to be done in pursuance of this section.

CHAPTER IX.

Miscellaneous.

Power of Provincial Government to make rules.

52. (1) The Provincial Government may make rules to carry out all or any of the purposes of this Act not inconsistent therewith.

(2) In particular, and without prejudice to the generality of the foregoing power, they shall have power to make rules with reference to the following matters :—

(*a*) all matters expressly required or allowed by this Act to be prescribed ;

(*b*) the powers of the commissioner to hold inquiries, to summon and examine witnesses and to compel the production of documents ;

(*c*) the grant of leave, leave allowances and travelling allowances to and the conditions of service of the commissioner ;

(*d*) the budgets, reports, accounts, returns or other information to be submitted by the Commissioner ;

(*e*) the qualifications for officers and servants referred to in section 10, the grant of leave, leave allowances and travelling allowances to them, the establishment of provident

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funds for them and generally the conditions of their service ;

(*f*) the organisation of a staff of auditors, their salaries and allowances, the control of such staff, its relations with the commissioner and trustees and generally the conditions of service of auditors ;

(*g*) the security, if any, to be furnished by the commissioner and the officers and servants referred to in section 10 ;

(*h*) the manner in which the accounts of the commissioner or endowments shall be audited and published, the time and place of audit and the form and contents of the auditor's report ;

(*i*) the method of calculating the income of a religious endowment ;

(*j*) the books and accounts to be kept at the office of the commissioner ;

(*k*) the custody and investment of the funds of the commissioner and the trustees ;

(*l*) the form and manner of applications to the commissioner ;

(*m*) the details which shall be included in or excluded from the budgets of religious endowments ; and

(*n*) the regulation of the mode and scale of expenses in relation to endowments.

(3) Such rules shall be laid on the table of the Orissa Legislative Assembly and notified in the *Gazette* ; after the expiry of fifteen days after the rules are so laid on the table of the Assembly, they shall have the force of law unless amended by the Legislative Assembly within that period or, if the Assembly is not sitting, during that period at its next meeting. If the rules are amended by the Legislative Assembly, the rules so amended shall have the force of law.

Power to alter schedules.

53. (1) The Provincial Government may make rules altering, adding to, or cancelling any of the Schedule to this Act.

(2) All references made in this Act to any of the aforesaid Schedule shall be construed as referring to such schedule as amended in exercise of the powers conferred by sub-section (1).

CENTRAL LIBRARY

Suits.

54. (1) The commissioner or any person having interest and having obtained the consent of the commissioner may institute a suit in the Court to obtain a decree—

(*a*) to recover possession of property comprised in a religious endowment ;

(*b*) appointing or removing the trustee of a *math* or excepted temple or of a specific endowment attached to a *math* or excepted temple ;

(*c*) vesting any property in a trustee ;

(*d*) declaring what proportion of the endowed property or of the interest therein shall be allocated to any particular object of the endowment ;

(*e*) directing account and enquiries ; or

(*f*) granting such further or other relief as the nature of the case may require.

(2) Sections 92 and 93 and rule 8 of Order I of the First Schedule of the Code of Civil Procedure, 1908, shall have no application to any suit claiming any relief in respect of the administration or management of a religious endowment and no suit in respect of such administration or management shall be instituted, except as provided by this Act.

V of 1908.

(3) All suits or other legal proceedings by or against the commissioner under this Act shall be instituted by or against him in his name.

Cost of suits, etc.

55. The costs, charges and expenses of and incidental to any suit or application under this Act or to any appeal from a decree or order passed in such suit or on such application shall be in the discretion of the Court, which may, subject to the provisions of section 48, direct the whole or any part of such costs, charges and expenses to be met from the property or income of the endowment concerned or to be borne and paid in such manner and by such persons as it thinks fit.

Cost of proceedings.

56. The costs of and incidental to all proceedings before the commissioner or before him and the person or persons in the service of the Crown under sections 33, 38, 39, 42, and 43, shall be in the discretion of the commissioner or the commissioner and the said person or persons as the case may be, and they shall have full power to determine by whom or out of what funds and to what extent such costs are to

CENTRAL LIBRARY

be paid ; and the order passed in this regard may be transferred for execution to the Court and shall be executed by the Court as if the order had been passed it by itself.

Schemes settled under section 92 of the Civil Procedure Code. V of 1908.

57. Where the administration of a religious endowment is governed by any scheme settled under section 92 of the Code of Civil Procedure, 1908, such scheme shall, notwithstanding any provisions of this Act which may be inconsistent with the provisions of such scheme, be deemed to be a scheme settled under this Act ; and such scheme may be modified or cancelled in the manner provided by this Act.

Alienation of immovable trust property.

58. (1) No exchange, sale or mortgage and no lease for a term exceeding five years of any immovable property belonging to any *math* or temple or of any specific endowment attached to a math or temple shall be valid or operative unless it is necessary or beneficial to the *math* or temple and is sanctioned by the commissioner and two persons, who shall be officers in the service of the Crown, appointed by the Provincial Government in this behalf.

(2) The trustee of the *math* or temple or any person having interest may, within one year of the date of the order under sub-section (1), apply to the District Court within whose jurisdiction the *math* or temple is situated for modifying or cancelling such order.

(3) The order under sub-section (1) when no application is made under sub-section (2) and the order of the District Court within whose jurisdiction the *math* or temple is situated when such application is made shall be final.

Putting trustee in in possession.

59. Where a person has been appointed as trustee of a *math* or temple or a religious endowment connected therewith or has been appointed to discharge the functions of a trustee, in accordance with the provisions of this Act and such person is resisted in, or prevented from obtaining possession of the *math*, temple or religious endowment concerned and the records, accounts and properties thereof, the Court may, on application by the person so appointed and on production of the order of appointment, direct the delivery to such person of the possession of *math*, temple or religious endowment and of the records, accounts and properties thereof.

CENTRAL LIBRARY

Saving of established customs and usages.

60. Save as otherwise expressly provided in or under this Act nothing herein contained shall affect any established usage of a *math* or temple or the rights, honours, emoluments and perquisites to which any person may by custom or otherwise be entitled in such *math* or temple.

Government not to interfere with religious endowments except as provided by this Act.

61. Save as provided in this or any other Act it shall not be lawful for the Provincial Government or for any executive officer of the Provincial Government in his official capacity to undertake or assume the superintendence of any land or other property granted for the support of, or otherwise belonging to, any *math* or temple, to take any part in the management or appropriation of any endowment made for its maintenance or to nominate or appoint the trustee of any religious endowment or to be concerned in any way with any religious endowment.

Court fees leviable on documents under this Act.

62. (1) Notwithstanding anything contained in the Court Fees Act, 1870, as amended by the Madras Court Fees (Amendment) Act, 1922, and the Bihar and Orissa Court Fees (Amendment) Act, 1922 and the Court Fees (Central Provinces Amendment) Act, 1935, the proper fees for the documents described in columns 1 and 2 of the Schedule to this Act shall be the fees indicated in column 3 thereof.

VII of 1870.

(2) The provisions of the Court Fees Act, 1870, shall otherwise, so far as may be, apply to the documents mentioned in the Schedule to this Act subject to such enactment as may be in force for the time being in the areas of the Province in which the institutions or endowments affected by such documents are situate.

Grant of copies of proceedings, etc.

63. The commissioner shall grant copies of proceedings or other records of his office on payment of such fees and subject to such conditions as may be determined by him. Copies shall be certified by the commissioner or such officer as may be authorised by him in this behalf, in the manner provided in section 76 of the Indian Evidence Act, 1872.

I of 1872.

Settlement of dispute as to whether an institution is a math or temple as defined in this Act.

64. (1) If any dispute arises as to whether an institution is a math or temple as defined in this Act or whether a temple is an excepted temple, such dispute shall be decided by the commissioner.

(2) Any person affected by a decision under sub-section (1) may, within one year, institute a suit in

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the Court to modify or set aside such decision ; but subject to the result of such suit, the order of the commissioner shall be final.

Suit to include appeal, etc.

65. Wherever a right of suit in a Court is conferred by this Act, such right shall also include the right of appeal, second appeal and revision under the law regulating such proceedings in respect of the decisions of the said Court.

Removal of difficulties in working the Act.

66. If any difficulty arises in first giving effect to the provisions of this Act, the Provincial Government, as occasion may require, may by order do anything which appears to them necessary for the purpose of removing the difficulty.

CENTRAL LIBRARY

SCHEDULE

(*See Section* 62.)

Section.	Description of document.	Proper fee. Rs.
17 (2)	Appeal to the commissioner by any office-holder or servant against an order of punishment by a trustee under sub-section (1).	2
18	Application to Court by the trustee to recover the amount from the person in possession or by the person in possession from the person responsible in law.	The fee leviable on a plaint for the amount claimed under the Court Fees Act in force in the area in which the temple is situate.
29 (3)	Appeal to Court against an order of suspension, dismissal or removal by the commissioner.	15
30 (4)	Appeal to District Court against an order of the commissioner determining a case of disqualification under section 30, sub-section (2).	15
33 (4)	Suit under the sub-section	15
33 (5)	Suit under the sub-section	15
38	Application to the commissioner by not less than 20 persons having interest for framing a scheme of administration for a *math* or excepted temple.	15
39 (4)	Suit under the sub-section	15
41	Suit under the section	15
47 (4)	Suit under the sub-section	15
47 (5)	Suit under the sub-section	15
54	Suit under the section	15
58 (2)	Application to the Court by the trustee of a *math* or temple or any person having interest for modifying or cancelling any order of the commissioner sanctioning alienation of immovable	15

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THE MADRAS HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS ACT, 1951.

[*Received the assent of the President on the 27th August, 1951. Published in the Fort St. George Gazette, Part IV-B, Extraordinary, p. 175, dated the 28th August, 1951.*]

ACT No. XIX OF 1951.

An Act to provide for the better administration and governance of Hindu Religious and Charitable Institutions and Endowments in the State of Madras.

Whereas it is expedient to amend and consolidate the law relating to the administration and governance of Hindu Religious and Charitable Institutions and Endowments in the State of Madras ; It is hereby enacted as follows :—

CHAPTER I.

Preliminary.

Short title, extent, application and commencement.

1. (1) This Act may be called The Madras Hindu Religious and Charitable Endowments Act, 1951.

(2) It extends to the whole of the State of Madras and applies to all Hindu public religious institutions and endowments, including the Tirumalai-Tirupati Devasthanams and the endowments thereof.

Explanation.—In this sub-section, Hindu public religious institutions and endowments do not include Jain religious institutions and endowments.

(3) It shall come into force on such date as the Government may, by notification in the *Fort St. George Gazette*, appoint.

Power to extend Act to Jain religious institutions and endowments.

2. The Government may, by notification in the *Fort St. George Gazette*, extend to Jain public religious institutions and endowments all or any of the provisions of this Act and of any rules made thereunder and thereupon the provisions so extended shall apply to such institutions and endowments as if the expressions 'Hindu' and 'Hindus' therein included 'Jain' and 'Jains' respectively :

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Provided that before issuing such a notification, the Government shall publish in the *Fort St. George Gazette*, a notice of their intention to do so, fix a period which shall not be less than two months from the date of publication of the notice, for the persons interested in the institutions and endowments concerned to show cause against the issue of the notification, and consider their objections, if any.

Power to extend Act to charitable endowments.

3. Where the Government have reason to believe that any Hindu or Jain public charitable endowments is being mismanaged and are satisfied that in the interests of the administration of such charitable endowment it is necessary to extend thereto all or any of the provisions of this Act and of any rules made thereunder, they may, by notification in the *Fort St. George Gazette*, extend to such charitable endowment the said provisions and thereupon the provisions so extended shall apply to such charitable endowment as if it were a specific endowment :

Provided that before issuing such a notification, the Government shall publish in the *Fort St. George Gazette*, a notice of their intention to do so, specifying the reasons for the action proposed to be taken by them and fixing a period which shall not be less than two months from the date of publication of the notice, for the persons interested in the endowment concerned to show cause against the issue of the notification, and consider their objections, if any.

Exemptions.

4. The Government may, by notification in the *Fort St. George Gazette* :—

(*a*) exempt from the operation of any of the provisions of this Act or of any rules made thereunder, any religious or charitable institution or endowment, the administration of which is for the time being vested in the Official Trustee or in the Administrator-General ; or

(*b*) vary or cancel such exemption.

Repeals.

5. (1) The Madras Hindu Religious Endowments Act, 1926, is hereby repealed.

(2) The Tirumalai-Tirupati Devasthanams Act, 1932, is hereby repealed, but the repeal shall not revive the arrangement made by the Government in 1843 for the management of the Tirumalai-Tirupati Devasthanams or the scheme settled by the Privy

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Council in Appeal No. 6 of 1906 or the rules framed under such scheme.

(3) The following enactments shall cease to apply to Hindu religious institutions and endowments, namely :—

(*a*) the Madras Endowments and Escheats Regulation, 1817 ;

(*b*) the Religious Endowments Act, 1863 ;

(*c*) the Charitable Endowments Act, 1890 ;

(*d*) the Charitable and Religious Trusts Act, 1920 ; and

(*e*) sections 92 and 93 of the Code of Civil Procedure, 1908.

Definitions.

6. In this Act, unless there is anything repugnant in the subject or context—

(1) "Area Committee" means, in relation to any temple or specific endowment, the Area Committee constituted under this Act and having jurisdiction over such temple or endowment ;

(2) "Assistant Commissioner" means an Assistant Commissioner appointed under section 8 ;

(3) "Board" means the Board constituted under section 10 of the Madras Hindu Religious Endowments Act, 1926 ;

(4) "charitable endowment" means all property given or endowed for the benefit of, or used as of right by, the Hindu or the Jain community or any section thereof, for the support or maintenance of objects of utility to the said community or section, such as rest-houses, choultries, patsalas, schools and colleges, houses for feeding the poor and institution for the advancement of education, medical relief and public health or other objects of a like nature ; and includes the institution concerned ;

(5) "Commissioner" means the Commissioner appointed under section 8.

(6) "Court" means—

(i) in relation to a math or temple situated in the Presidency town, the Madras City Civil Court ;

(ii) in relation to a math or temple situated elsewhere, the Subordinate Judge's Court having jurisdiction over the area in which the math or temple is situated, or if there

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is no such Court, the District Court having such jurisdiction ;

(iii) in relation to a specific endowment attached to a math or temple, the Court which would have jurisdiction as aforesaid in relation to the math or temple ;

(iv) in relation to a specific endowment attached to two or more maths or temples, any Court which would have jurisdiction as aforesaid in relation to either or any of such maths or temples ;

(7) "Deputy Commissioner" means a Deputy Commissioner appointed under section 8 ;

(8) "Government" means the State Government;

(9) "hereditary trustee" means the trustee of a religious institution succession to whose office devolves by hereditary right or is regulated by usage or is specifically provided for by the founder, so long as such scheme of succession is in force ;

(10) "math" means a Hindu religious institution with properties attached thereto and presided over by a person whose duty it is to engage himself in imparting religious instruction or rendering spiritual service to a body of disciples or who exercises or claims to exercise spiritual headship over such a body ; and includes places of religious worship or instruction which are appurtenant to the institution ;

Explanation.—Where the headquarters of a math are outside the State but the math has properties situated within it, control shall be exercised over the math in accordance with the provisions of this Act, in so far as the properties of the math situated within the State are concerned.

(11) "person having interest" means—

(*a*) in the case of a math, a disciple of the math of a person of the religious persuasion to which the math belongs ;

(*b*) in the case of a temple, a person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in the habit of partaking in the benefit of the distribution of gifts thereat ;

CENTRAL LIBRARY

(*c*) in the case of a specific endowment, a person, who is entitled to attend at or is in the habit of attending the performance of the service or charity, or who is entitled to partake or is in the habit of partaking in the benefit of the charity ;

(12) "prescribed" means prescribed by rules made by the Government under this Act.

(13) "religious charity" means a public charity associated with a Hindu festival or observance of a religious character, whether it be connected with a math or temple or not ;

(14) "religious endowment" or "endowment" means all property belonging to or given or endowed for the support of maths or temples, or given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity ; and includes the institution concerned and also the premises thereof, but does not include gifts of property made as personal gifts to the archaka, service-holder or other enployee of a religious institution ;

Explanation (1).—Any inam granted to an archaka, service-holder or other enployee of a religious institution for the performance of any service or charity in or connected with a religious institution shall not be deemed to be a personal gift to the archaka, service-holder or employee but shall be deemed to be a religious endowment.

Explanation (2).—All property which belonged to, or was given or endowed for the support of a religious institution, or which was given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity shall be deemed to be a "religious endowment" or "endowment" within the meaning of this definition, notwithstanding that, before or after the commencement of this Act, the religious institution has ceased to exist or ceased to be used as a place of religious worship or instruction or the service or charity has ceased to be performed :

Provided that this Explanation shall not be deemed to apply in respect of any property which vested in any person before the commencement of this Act, by the operation of the law of limitation.

CENTRAL LIBRARY

(15) "religious institution" means a math, temple or specific endowment ;

(16) "specific endowment" means any property or money endowed for the performance of any specific service or charity in a math or temple, or for the performance of any other religious charity, but does not include an inam of the nature described in Explanation (1) to clause (14) ;

(17) "temple" means a place by whatever designation known, used as a place of public religious worship, and dedicated to, or for the benefit of or used as of right by, the Hindu community or any section thereof, as a place of public religious worship ;

(18) "Tirumalai-Tirupati Devasthanams" or "Devasthanams" mean the temples specified in Schedule II and the endowments thereof and shall include the educational institutions referred to in Schedule III;

(19) "trustee" means any person or body by whatever designation known in whom or in which the administration of a religious institution is vested, and includes any person or body who or which is liable as if such person or body were a trustee.

CHAPTER II.

The Commissioner and other Controlling Authorities.

Authorities under Act.

7. There shall be the following classes of authorities under this Act, namely :—

(*a*) The Commissioner ;
(*b*) Deputy Commissioners ;
(*c*) Assistant Commissioners ; and
(*d*) Area Committees.

Government to appoint Commissioner, etc.

8. The Government shall appoint the Commissioner and such number of Deputy and Assistant Commissioners as they think fit.

Commissioner, etc., to be Hindus.

9. The Commissioner, every Deputy or Assistant Commissioner and every other officer or servant appointed to carry out the purposes of this Act, by whomsoever appointed, shall be a person professing the Hindu religion, and shall cease to hold office as such when he ceases to profess that religion.

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Delegation to Deputy Commissioners.

10. (1) The Commissioner shall, with the previous approval of the Government, specify the area within which each Deputy Commissioner, if there is more than one, shall exercise the powers and discharge the duties assigned by or under this Act to a Deputy Commissioner as such.

(2) The Commissioner may delegate any of the powers conferred or duties imposed on him by or under this Act [including the powers and duties of an Assistant Commissioner which may be exercised by the Commissioner under the proviso to section 11, sub-section (2), but not including the powers and duties of the Commissioner under sections 18, 19, 38, 39, 52, 56, 61, 64 or 76 (2)] in respect of any area or of any class or group of institutions in the State or any area therein to a Deputy Commissioner subject to such restrictions and control as the Government may, by general or special order, lay down and subject also to such limitations and conditions, if any, as may be specified in the order of delegation.

Territorial jurisdiction and powers and duties of Assistant Commissioners.

11. (1) The Commissioner shall, with the previous approval of the Government, divide the State into divisions, each of which shall be in the charge of an Assistant Commissioner.

(2) An Assistant Commissioner shall exercise such powers and discharge such duties as are assigned to him by or under this Act in respect of his division :

Provided that the Commissioner may, by order in writing, declare that the exercise and discharge of all or any of such powers and duties shall be subject to such exceptions, limitations and conditions as may be specified in the order, and may himself exercise or discharge any power or duty so excepted.

(3) The Commissioner may delegate to an Assistant Commissioner any of the powers conferred or duties imposed on the Commissioner by or under this Act [other than the powers and duties referred to in sections 18, 19, 38, 39, 52, 56, 61, 64 or 76 (2)] in respect of the division of the Assistant Commissioner or of any institutions or any class or group of institutions in that division, subject to such restrictions and control as the Government may, by general or special order, lay down and subject also to such limitations and conditions, if any, as may be specified in the order of delegation.

CENTRAL LIBRARY

Area Committees.

12. (1) The Government—

(*a*) shall, as soon as may be after the commencement of this Act, by notification in the *Fort St. George Gazette*, constitute an Area Committee for all temples situated in an Assistant Commissioner's division or part thereof other than temple included in the list published under section 38 ; and

(*b*) may likewise abolish any Area Committee constituted under clause (*a*), provided that before doing so, a reasonable opportunity shall be given to the Committee to show cause against its abolition.

(2) An Area Committee shall have jurisdiction over specific endowments attached to the temples for which it is constituted, other than specific endowments included in the list published under section 38 :

Provided that where a specific endowment is attached to two or more temples comprised within the jurisdiction of two or more Area Committees, the Commissioner shall decide as to which of the Area Committees shall have jurisdiction over the specific endowment :

Provided further that where a specific endowment is attached partly to one or more temples included in the list published under section 38 and partly to one or more temples not so included, only the Commissioner shall have jurisdiction over the specific endowment and no Area Committee shall have such jurisdiction.

Strength of Area Committees and term of office and disqualifications of members.

13. (1) Every Area Committee shall consist of such number of members as may be appointed by the Government, not being less than three nor more than five.

(2) Save as otherwise expressly provided in this section, a member of an Area Committee shall be entitled to hold office for three years from the date on which his appointment is notified in the *Fort St. George Gazette*.

(3) A person shall be disqualified for being appointed as, or for being, a member of an Area Committee—

(*a*) if he does not profess the Hindu religion ;

(*b*) if he has applied or applies to be, or has been, or is, adjudicated an insolvent ;

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(*c*) if he is of unsound mind, a deaf-mute or suffering from contagious leprosy ;

(*d*) if he is a trustee of, or an office-holder or a servant attached to, or a person in receipt of any emolument or perquisite from, any temple or specific endowment over which the Area Committee has jurisdiction, or if he belongs to a joint Hindu family a member of which is such a trustee, office-holder or servant or a person in receipt of any such emolument or perquisite ;

(*e*) if he has been sentenced by a criminal court to transportation or to imprisonment for a period of more than six months, for any offence other than an offence not involving moral turpitude, such sentence not having been cancelled or reduced to a period of six months or less, or the offence not having been pardoned, provided that the Government may direct that such sentence shall not operate as a disqualification.

(4) A person shall also be disqualified for being appointed as a member of an Area Committee if he is already a member of some other Area Committee.

(5) A member of an Area Committee shall also cease to hold office—

(*a*) if he absents himself from three consecutive meetings of the Committee :

Provided that when a person who ceased to be a member by reason of such absence, applies for restoration within one month from the date of the last of the three meetings, the Committee may, at the meeting next after the receipt of such application restore him to his office of member but a member shall not be so restored more than twice during his term of office, or

(*b*) if he resigns his office by giving notice in writing to the Government.

Chairman of Area Committee.

14. (1) The Assistant Commissioner of the division for which or part of which an Area Committee is constituted shall be its Chairman and shall be entitled to preside over its meetings and take part in its proceedings, but shall not be entitled to vote.

(2) He shall forward to the Commissioner a copy of the minutes of the proceedings at every

CENTRAL LIBRARY

meeting of the Area Committee within a week from the date of the meeting.

Power of Government to make rules.

15. The Government may make rules regarding the convening of meetings of Area Committees, the quorum for, and the conduct of business at, such meetings, and all matters relating to the transaction of their business.

Act of Area Committee not to be invalidated by informality.

16. No act of an Area Committee shall be deemed to be invalid by reason only of a defect in its constitution or on the ground that the Chairman or any member thereof was disqualified for, or had ceased to hold, his office, or by reason of such act having been done during the period of any vacancy in the office of the Chairman or any member of such Committee.

Performance of functions of Area Committee on abolition.

17. Where an Area Committee has been abolished under clause (*b*) of sub-section (1) of section 12, a new Area Committee shall be constituted within six months of its abolition and till then its powers and duties shall be exercised and discharged by the Assistant Commissioner concerned.

Power of Commissioner to call for records and pass orders.

18. (1) The Commissioner may call for and examine the record of any Deputy or Assistant Commissioner, of any Area Committee, or of any trustee not being the trustee of a math or of a specific endowment attached to a math, in respect of any proceeding under this Act (not being a proceeding in respect of which a suit or an appeal to a Court is provided by this Act), to satisfy himself as to the regularity of such proceeding, or the correctness, legality or propriety of any decision or order passed therein.

(2) If any such decision or order has been passed by any Deputy or Assistant Commissioner, or by the trustee of any religious institution other than one included in the list published under section 38, and it appears to the Commissioner that the decision or order should be modified, annulled, reversed or remitted for reconsideration, he may pass orders accordingly.

(3) (*a*) If any such decision or order has been passed by any Area Committee or by the trustee of any religious institution included in the list published under section 38, the Commissioner may, if he thinks fit, remit the mater together with his observations in regard thereto, to the Committee or trustee for reconsideration of the decision or order and report to the

CENTRAL LIBRARY

Commissioner within a time to be specified by him in this behalf.

(*b*) On receipt of, and after considering, such report, it shall be open to the Commissioner to modify, annul or reverse the decision or order, or the decision or order as revised after such reconsidertion, as the case may be.

(*c*) If the report is not received by the Commissioner within the time specified or such further time as may be granted by him the Commissioner may modify, annul or reverse the decision or order of the Area Committee or trustee, as the case may be.

(4) The Commissioner shall not pass any order prejudicial to any party under sub-section (2) or clause (*b*) or clause (*c*) of sub-section (3) without hearing him or giving him a reasonable opportunity of being heard.

(5) The Commissioner may stay the execution of any decision or order of the nature referred to in sub-section (1), pending the exercise of his powers under sub-section (2) or sub-section (3) in respect thereof.

Other powers of Commissioner in relation to Deputy and Assistant Commissioners and Area Committees.

19. (1) The Commissioner shall have power at any stage—

(*a*) to transfer any proceeding pending before a Deputy or an Assistant Commissioner to his own file and dispose of it himself, or

(*b*) to transfer it to another Deputy or Assistant Commissioner for disposal.

(2) If the Commissioner is satisfied that a Deputy or an Assistant Commissioner has failed to exercise any power or discharge any duty which he ought to have exercised or discharged, the Commissioner may himself exercise such power or discharge such duty.

(3) If the Commissioner is satisfied that an Area Committee—

(*a*) has failed to exercise any power or discharge any duty which it ought to have exercised or discharged, or

(*b*) is unable for any reason to exercise any power or discharge any duty,

CENTRAL LIBRARY

the Commissioner may himself exercise such power or discharge such duty or authorise the Assistant Commissioner to do so :

Provided that in cases falling under clause (*a*), the Commissioner shall first fix a period for the exercise of the power or the performance of the duty by the Area Committee and shall exercise the right conferred on him by this sub-section only if the power is not exercised or the duty is not performed by the Area Committee within the period so fixed.

(4) Notwithstanding anything contained in this Act, where the office of a Deputy or an Assistant Commissioner is vacant, the Commissioner may, until the vacancy is filled—

(*a*) himself exercise the powers and discharge the duties assigned by or under this Act to the Deputy or Assistant Commissioner, or

(*b*) authorise another Deputy or Assistant Commissioner to exercise the said powers and discharge the said duties.

(5) Any party aggrieved by an order of the Commissioner under sub-section (1) (*a*), (2), (3) or (4) (*a*) not being an order against which a suit or an appeal to a Court is provided in this Act may appeal to the Government within three months from the date of the receipt of the order by him :

Provided that the Government shall not pass any order prejudicial to any party without hearing him or giving him a reasonable opportunity of being heard.

CHAPTER III.

Religious Institutions.

General Provisions.

Powers and duties of the Commissioner in respect of religious endowments.

20. Subject to the provisions of this Act, the administration of all religious endowments shall be subject to the general superintendence and control of the Commissioner ; and such superintendence and control shall include the power to pass any orders which may be deemed necessary to ensure that such endowments are properly administered and that their

CENTRAL LIBRARY

income is duly appropriated for the purposes for which they were founded or exist.

Power to enter religious institution.

21 (1) The Commissioner, Deputy and Assistant Commissioners and such other officers as may be authorized by the Commissioner or the Area Committee in this behalf shall have power to enter the premises of any religious institution or any place of worship for the purpose of exercising any power conferred, or discharging any duty imposed, by or under this Act.

(2) If any such officer is resisted in the exercise of such power or discharge of such duty, the Magistrate having jurisdiction shall, on a written requisition from such officer, direct any police officer not below the rank of Sub-Inspector to render such help as may be necessary to enable the officer to exercise such power or discharge such duty.

(3) Nothing in this section shall be deemed to authorize any person who is not a Hindu to enter the premises or place referred to in sub-section (1) or any part thereof.

Trustees to be Hindus and within certain limits of age.

22. No person may succeed or be appointed to, or hold, the office of the trustee of a religious institution—

(*a*) unless he professes the Hindu religion, and

(*b*) except in the case of a hereditary trustee, unless he is not less than twenty-five and not more than seventy years of age.

Trustee bound to obey orders issued under Act.

23. The trustee of a religious institution shall be bound to obey all lawful orders issued under the provisions of this Act by the Government, the Commissioner, the Deputy Commissioner, the Area Committee or the Assistant Commissioner.

Care required of trustee and his powers.

24. (1) Subject to the provisions of the Madras Temple Entry Authorization Act, 1947, the trustee of every religious institution is bound to administer its affairs and to apply its funds and properties in accordnace with the term of the trust, the usage of the institution and all lawful directions which a competent authority may issue in respect thereof and as carefully as a man of ordinary prudence would deal with such affairs, funds and properties if they were his own.

(2) A trustee shall, subject to the provisions of this Act, be entitled to exercise all powers incidental

CENTRAL LIBRARY

to the provident and beneficial administration of the religious institution and to do all things necessary for the due performance of the duties imposed on him.

(3) A trustee shall not be entitled to spend the funds of the religious institution for meeting any costs, charges, or expenses incurred by him in any suit, appeal or application or other proceeding for, or incidental to, his removal from office or the taking of any disciplinary action against him :

Provided that the trustee may reimburse himself in respect of such costs, charges or expenses if he is specifically permitted to do so by an order passed under section 88.

Preparation of register for all institutions.

25. (1) For every religious institution, there shall be prepared and maintained a register showing—

(*a*) the names of past and present trustees and particulars as to the custom, if any, regarding succession to the office of trustee ;

(*b*) particulars of the scheme of administration and of the *dittam* or scale of expenditure ;

(*c*) the names of all offices to which any salary, emolument or perquisite is attached and the nature, time and conditions of service in each case ;

(*d*) the jewels, gold, silver, precious stones, vessels and utensils, and other movables belonging to the institution, with their estimated value ;

(*e*) particulars of all other endowments of the institution and of all title-deeds and other documents ;

(*f*) particulars of the idols and other images in or connected with the institution, whether intended for worship or for being carried in processions ;

(*g*) such other particulars as may be required by the Commissioner.

(2) The register shall be prepared, signed and verified by the trustee of the institution concerned or by his authorized agent and submitted by him to the Commissioner, directly in the case of a math through the Area Committee, in case the institution is subject to the jurisdiction of an Area Committee, and through the Assistant Commissioner in other cases, within

CENTRAL LIBRARY

three months from the commencement of this Act or from the founding of the institution, as the case may be, or within such further period as may be allowed by the Commissioner, the Area Committee or the Assistant Commissioner :

Provided that this sub-section shall not apply where a register so signed and verified has been submitted to the Board before the commencement of this Act.

(3) The Area Committee or the Assistant Commissoner, if the register is submitted through it or him, may, after such inquiry as it or he may consider necessary, recommend such alterations, omissions or additions in the register as it or he may think fit.

(4) The Commissioner may, after receiving the register and the recommendations of the Area Committee or of the Assistant Commissioner with respect thereto and making such further inquiry as he may consider necessary, direct the trustee to make such alterations, omissions or additions in the register as the Commissioner may deem fit.

(5) The trustee shall carry out the orders of the Commissioner and then submit three copies of the register as corrected to the Commissioner for approval.

(6) One copy of the register as approved by the Commissioner shall be furnished to the trustee and one to the Area Committee or the Assistant Commissioner concerned, if any.

Annual verification of the register..

26. The trustee or his authorized agent shall scrutinise the entries in the register every year and submit to the Commissioner for his approval, directly or through the Area Committee or through the Assistant Commissioner, as the case may require, a verified statement showing the alterations, omissions or additions required in the register ; and the provisions of sub-sections (3) to (6) of section 25 shall apply in relation to such statement as they apply in relation to register.

Trustee to furnish accounts, returns, etc.

27. (1) The trustee of every religious institution shall furnish to the Commissioner such accounts, returns, reports or other information relating to the administration of the institution, its funds, property or income, or moneys connected therewith, or the appro-

CENTRAL LIBRARY

priation thereof, as the Commissioner may require and at such time and in such form as he may direct.

(2) The powers conferred by sub-section (1), may also be exercised by the Assistant Commissioner in the case of religious institutions other than maths, and by the Area Committee in the case of institutions subject to its jurisdiction.

Inspection of property and documents.

28. (1) The Commissioner or any officer or other person deputed by the Commissioner in this behalf may inspect all movable and immovable property belonging to, and all records, correspondence, plans, accounts and other documents relating to, any religious institution.

(2) The powers conferred by sub-section (1) may also be exercised, in the case of religious institutions other than maths, by the Assistant Commissioner, and in the case of institutions over which an Area Committee has jurisdiction, by any member of the Committee authorised by it in this behalf.

(3) It shall be the duty of the trustee of the institution concerned and all officers and servants working under him, his agent and any person having concern, in the administration of the institution, to afford all such assistance and facilities as may be necessary or reasonably required in regard to any inspection made in pursuance of sub-section (1) or sub-section (2) and also to produce for inspection any movable property or document referred to in sub-section (1) if so required.

Alienation of immovable trust property.

29. (1) Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property belonging to, or given or endowed for the purposes of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution :

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in such manner as may be prescribed inviting objections and suggestions with respect thereto ; and all objections and suggestions received from the trustee or other persons having interest shall be duly considered by the Commissioner.

(2) When according such sanction, the Commissioner may impose such conditions and give such

CENTRAL LIBRARY

directions as he may deem necessary regarding the utilization of the amount raised by the transaction, the investment thereof and in the case of a mortgage, regarding the discharge of the same within a reasonable period.

(3) A copy of the order made by the Commissioner under this section shall be communicated to the Government and to the trustee and shall be published in such manner as may be prescribed.

(4) The trustee may within three months from the date of his receipt of a copy of the order, and any person having interest may within three months from the date of the publication of the order, appeal to the Government to modify the order or set it aside.

(5) Nothing contained in this section shall apply to the inams referred to in section 35.

Authority of trustee to incur expenditure for securing the health, etc., of pilgrims and worshippers and for the training of archakas, etc.

30. (1) The trustee of a religious institution may out of the funds in his charge, after making adequate provision for the purposes referred to in section 70, sub-section (2) incur expenditure—

(*a*) on arrangements for securing the health, safety or convenience of disciples, pilgrims or worshippers resorting to the institution ; and

(*b*) for the training of archakas, adhyapakas vedaparayanikas and othuvars.

(2) In incurring such expenditure, the trustee shall be guided by such general or special instructions as may be given by the Commissioner or in the case of an institution over which an Area Committee has jurisdiction, also by such Committee.

Utilization of surplus funds.

31. (1) If after making adequate provisions for the purposes referred to in section 70, sub-section (2), and also for the arrangements and the training referred to in section 30, sub-section (1), there is a surplus in the income of the institution, the trustee thereof may, with the previous sanction in writing of the Deputy Commissioner, appropriate such surplus or any portion thereof for all or any of the purposes specified in section 59, sub-section (1) :

Provided that before according such sanction, the Deputy Commissioner shall publish the particulars relating to the proposal of the trustee in such manner as may be prescribed, invite objections and suggestions with respect thereto and consider all objections

CENTRAL LIBRARY

and suggestions received from persons having interest :

Provided further the sanction aforesaid shall be published in such manner as may be prescribed ;

(2) Any person having interest may, within such time as may be prescribed, appeal to the Commissioner against the sanction accorded by the Deputy Commissioner under sub-section (1).

Enforcement of service or charity in certain cases.

32. (1) Where a specific endowment attached to a math or temple consists merely of a charge on property and there is failure in the due performance of the service or charity, the trustee of the math or temple concerned may require the person in possession of the property on which the endowment is a charge, to pay the expenses incurred or likely to be incurred in causing the service or charity to be performed otherwise. In default of such person making payment as required, the Deputy Commissioner may, on the application of the trustee and after giving the person in possession a reasonable opportunity of stating his objections in regard thereto, by order, determine the amount payable to the trustee.

(2) Where the person in possession of the property on which the endowment is a charge is not the person responsible in law for the performance of the service or charity and any amount is paid by or recovered from the person in possession, the Deputy Commissioner may on the application of the person in possession and after giving the person responsible in law a reasonable opportunity of stating his objections in regard thereto, by order, require the person responsible in law to pay to the person in possession the amount so paid or recovered.

(3) Against an order of the Deputy Commissioner under sub-section (1) or sub-section (2) the trustee or the person affected may, within two months from the date of the receipt of the order by him, appeal to the Commissioner.

(4) On application by the trustee to the Collector of the district in which the property referred to in sub-section (1) is situated, or on application by the person in possession to the Collector of the district in which is situated any property of the person responsible in law, as the case may be, the Collector shall recover from the person in possession or the person

CENTRAL LIBRARY

reponsible in law, as the case may be, the amount specified in the order of the Deputy Commissioner as modified by the order of the Commissioner, if any, and the expenses of such recovery as if they were arrears of land revenue and pay to the trustee or, as the case may be, to the person in possession, the amount due to him.

Power of trustee of math or temple over trustees of specific endowments.

33. The trustee of a specific endowment made for the performance of any service or charity connected with a math or temple shall perform such service or charity subject to the general superintendence of the trustee of the math or temple and shall obey all lawful orders issued by him.

Enfranchisement or freeing of lands, etc., held by a devadasi on condition of service in a temple.

34. (1)[f] (*a*) (*i*) Where the remuneration for any service to be performed by a devadasi in a temple consists of lands granted or continued in respect of, or annexed to, such service by the Government, the Government shall enfranchise the said lands from the condition of service by the imposition of quit-rent.

(*ii*) Where the remuneration for such service consists of an assignment of land revenue so granted or continued, the Government shall enfranchise such assignment of revenue from the condition of service :

Provided that where, at the time when proceedings are taken under this sub-clause, the devadasi is herself the owner of the lands in respect of which the assignment of revenue has been made, enfranchisement shall be effected and quit-rent imposed in the manner laid down in sub-clause (1).

(*iii*) Where the remuneration for such service consists in part of lands and in part of an assignment of land revenue, enfranchisement of the lands shall be effected in the manner laid down in sub-clause (i) and of the assignment of the land revenue in the manner laid down in sub-clause (ii).

Explanation.—For the purposes of this clause, a grant shall be deemed to consist of an assignment of land revenue in all cases in which the devadasi herself is not, at the time specified in the proviso to sub-clause (ii), the owner of the lands in question.

(*b*) Enfranchisement under clause (*a*) shall be effected in accordance with such rules as the Govern-

CENTRAL LIBRARY

ment may make in this behalf and shall take effect as and from such date as they may fix.

(2) Where the remuneration for such service consists in whole or in part, of lands or of produce of lands not falling under sub-section (1), the Government shall direct the Collector to determine the amount of rent payable on the lands or the produce in question. The Collector shall thereupon, after giving notice to the party concerned and holding such enquiry as may be prescribed by the Government, by an order, determine the amount of rent, and in doing so, he shall have due regard to—

(*a*) the rent payable by the tenant for lands of a similar description and with similar advantages in the same village or neighbouring villages ; and

(*b*) the improvements, if any, effected by the devadasi in respect of the lands.

Such order shall be communicated to the parties concerned and also published in the manner prescribed.

(3) The amount of rent fixed by the Collector under sub-section (2) may be questioned by petition presented to the Board of Revenue within three months of the date of the publication of the order under the said sub-section but subject to the result of such petition, the order of the Collector fixing the amount of rent under sub-section (2) shall be final and shall not be liable to be questioned in any Court of law :

Provided, however, that the Board of Revenue shall have power on sufficient grounds to entertain a petition presented after expiration of the period of three months.

(4) While determining the rent under sub-section (2), the Collector shall fix a date from which the order shall take effect and such lands or produce shall be deemed to have been freed from the condition of service on and from the date so fixed.

(5) No obligation to render any service relating to any temple to which any devadasi may be subject by reason of any grant of land or assignment of land revenue or produce derived from land, shall be enforceable, when such land, assignment or produce

CENTRAL LIBRARY

is enfranchised or freed, as the case may be, in the manner, hereinbefore provided.

(6) No order passed under sub-section (1), (2) or (3) shall operate as a bar to the trial of any suit or issue relating to the right to enjoy the land, or assignment of land revenue or produce derived from land, as the case may be.

(7) (*a*) The quit-rent imposed under sub-section (1) shall be payable to the temple concerned.

(*b*) the assignment of land revenue enfranchised under sub-section (1), or the rent fixed under sub-sections (2) and (3), as the case may be, shall be payable to the devadasi concerned during her lifetime and after her death to the temple concerned.

(8) For the purpose of this section, "devadasi" shall mean any Hindu unmarried female, who is dedicated to a temple.

(9) Where any inam is granted for a service which is auxiliary to the service, to be performed by a devadasi in a temple, such inam shall be enfranchised or freed from the condition of service, as if it were a devadasi inam ; and the provisions of sub-section (1) to (8) shall apply accordingly.

Resumption and re-grant of inam granted for the performance of any charity or service.

35. (1) Any exchange, gift, sale or mortgage, and any lease for a term exceeding five years, of the whole or any portion of any inam granted for the support or maintenance of a religious institution or for the performance of a charity or service connected therewith or of any other religious charity and made, confirmed or recognized by the Government shall be null and void :

Provided that any transaction of the nature aforesaid (not being a gift) may be sanctioned by the Government as being necessary or beneficial to the institution.

Explanation.—Nothing contained in this sub-section shall affect or derogate from the rights and obligations of the landholder and tenant in respect of any land which is ryoti land as defined in the Madras Estates Land Act, 1908.

(2) (*a*) The Collector may, on his own motion, or on the application of the trustee of the religious institution or of the Commissioner or of any person having interest in the institution who has obtained the con-

CENTRAL LIBRARY

sent of such trustee or the Commissioner, by order, resume the whole or any part of any such inam, on one or more of the following grounds, namely :—

(i) that except in the case referred to in the proviso to sub-section (1), the holder of such inam or part or the trustee of the institution has made an exchange, gift, sale or mortgage of such inam or part or any portion thereof or has granted a lease of the same or any portion thereof for a term exceeding five years, or

(ii) that the religious institution has ceased to exist or the charity or service in question in question has in any way become impossible of performance, or

(iii) that the holder of such inam or part has failed to perform or make the necessary arrangements for performing, in accordance with the custom or usage of the institution, the charity or service for performing which the inam had been made, confirmed or recognized as aforesaid, or any part of the said charity or service, as the case may be.

When passing an order under this clause, the Collector shall determine whether such inam or the inam comprising such part, as the case may be, is a grant of both the melvaram and the kudivaram or only of the melvaram :

Provided that in the absence of evidence to the contrary, the Collector shall presume that any minor inam is a grant of both the melvaram and the kudivaram.

(*b*) Before passing an order under clause (*a*), the Collector shall give notice to the trustee, to the Commissioner, to the inamdar concerned, to the person in possession of the inam where he is not the inamdar and to the alienee, if any, of the inam ; the Collector shall also publish a copy of such notice in such manner as may be prescribed and such publication shall be deemed to be sufficient notice to every other person likely to be affected by such order ; and the Collector shall hear the objections, if any, of the person to whom such notice is given or deemed to be given and hold such inquiry as may be prescribed.

CENTRAL LIBRARY

Explanation.—Where only a part of the inam is affected, notice shall be given under this clause to the holder of such part as well as to the holder or holders of the other part or parts, to the person in possession of every such part where he is not the holder thereof, and to the alienee, if any, of every such part and the objections of all such persons shall be heard by the Collector.

(*c*) A copy of every order passed under clause (*a*) shall be communicated to each of the persons mentioned in clause (*b*), and shall also be published in the manner prescribed.

(*d*) (i) Any party aggrieved by an order of the Collector under clause (*a*) may appeal to the District Collector within such time as may be prescribed, and on such appeal the District Collector may, after giving notice to the Commissioner and each of the persons mentioned in clause (*b*) and after holding such inquiry as may be prescribed, pass an order confirming, modifying or cancelling the order of the Collector.

(ii) The order of the District Collector on such appeal, or the order of the Collector under clause (*a*) where no appeal is preferred under sub-clause (i) to the District Collector within the time prescribed, shall be final :

Provided that where there has been an appeal under sub-clause (i) and it has been decided by the District Collector or where there has been no appeal to the District Collector and the time for preferring an appeal has expired, any party aggrieved by the final order of the District Collector or the Collector, as the case may be, may file a suit in a Civil Court for determining whether the inam comprises both the melvaram and the kudivaram or only the melvaram. Such a suit shall be instituted within six months from the date of the order of the District Collector on appeal where there has been an appeal under sub-clause (i), or from the date of the expiry of the period prescribed under sub-clause (i) for an appeal to the District Collector where there has been no such appeal.

(*e*) Except as otherwise provided in clause (*d*), an order of resumption passed under this section shall not be liable to be questioned in any Court of law.

(*f*) Where any inam or part of any inam is resumed under this section, the Collector or the District

CENTRAL LIBRARY

Collector, as the case may be, shall, by order, re-grant such inam or part—

(i) as an endowment to the religious institution concerned, or

(ii) in case of resumption on the ground that the religious institution has ceased to exist or that the charity of service in question has in any way become impossible of performance, as an endowment for such religious, educational or charitable institution as the Commissioner may recommend.

(*g*) The order of re-grant made under clause (*f*) shall, on application made to the Collector within the time prescribed, be executed by him in the manner prescribed.

(*h*) Nothing in this section shall affect the operation of section 34.

Office-holders and servants of religious institutions not to be in possession of jewels, etc., except under conditions.

36. Notwithstanding anything contained in any scheme settled or deemed to be settled under this Act or in any decree or order, of a Court, or any custom or usage to the contrary no office-holder or servant of a religious institution shall have the right to be in possession of the jewels or other valuables belonging to the religious institution except under such conditions and safeguards as the Commissioner, may, by general or special order, direct.

Religious institutions other than maths or specific endowments attached thereto.

Sections 38 to 51 not to apply to maths or specific endowments attached to maths.

37. The provisions of sections 38 to 51 shall not apply to maths or specific endowments attached to maths.

Commissioner to publish list of certain institutions.

38. The Commissioner shall publish in the prescribed manner a list of the religious institutions whose annual income as calculated for the purposes of the levy of contribution under section 76 is not less than twenty thousand rupees, and may from time to time modify such list in the prescribed manner :

Provided that the Commissioner shall not be bound to remove any institution from such list unless its annual income calculated as aforesaid has fallen

CENTRAL LIBRARY

below twenty thousand rupees for three consecutive years.

Trustees and their number and term of office.

39. (1) Where a religious institution included in the list published under section 38 or over which no Area Committee has jurisdiction, has no hereditary trustee, the Commissioner shall constitute a Board of Trustees consisting of not less than three and not more than five persons appointed by him.

(2) Where any such institution has, at the commencement of this Act, both a hereditary trustee or trustees and a non-hereditary trustee or trustees, the Commissioner shall have power to appoint the non-hereditary trustee or trustees as and when vacancies arise in their number.

(3) Every trustee appointed under sub-section (1) or sub-section (2) shall hold office for a term of five years, unless in the meanwhile the trustee is removed or dismissed or his resignation is accepted by the Commissioner or he otherwise ceases to be a trustee.

Chairman.

40. (1) In the case of a religious institution for which a Board of Trustees is constituted under section 39, sub-section (1), the Board, shall elect one of its number to be its Chairman.

(2) In the case of any other religious institution having more than one trustee, the trustees of such institution shall elect one of their number to be the Chairman.

(3) A Chairman elected under sub-section (1) or sub-section (2) shall hold office for such period as may be prescribed.

Power of Area Committee to appoint trustees.

41. (1) In the case of any religious institution over which an Area Committee has jurisdiction, the Area Committee shall have the same power to appoint trustees as is vested in the Commissioner in the case of a religious institution referred to in section 39 :

Provided that the Area Committee may, in the case of any institution which has no hereditary trustee, appoint a single trustee.

(2) The provisions of section 39, sub-section (3), and section 40, shall apply to the trustee or trustees appointed, or the Board of Trustees constituted, by the Area Committee as they apply in relation to the trustee or trustees appointed or the Board of Trustees constituted, by the Commissioner.

CENTRAL LIBRARY

Power under sections 39 and 41 to be exercisable notwithstanding provision in scheme.

42. The power to appoint trustees under section 39 or section 41 shall be exercisable notwithstanding that the scheme, if any, settled, or deemed under this Act to have been settled for the institution contains provisions to the contrary.

Claims of certain persons to be trustees.

43. In making appointments of trustees under section 39 or 41, the Commissioner, or the Area Committee, as the case may be, shall have due regard to the claims of persons belonging to the religious denomination for whose benefit the institution concerned is chiefly maintained.

Non-hereditary trustees holding office at commencement of the Act.

44. Every non-hereditary trustee lawfully holding office at the commencement of this Act, shall be deemed to have been duly appointed trustee under this Act for the residue of his term of office at such commencement.

Power to suspend, remove or dismiss trustees.

45. (1) The Deputy Commissioner in the case of any religious institution over which an Area Committee has jurisdiction, and the Commissioner in the case of any other religious institution, may suspend, remove or dismiss any hereditary or non-hereditary trustee or trustee thereof—

(*a*) for persistent default in the submission of budgets, accounts, reports or returns, or

(*b*) for wilful disobedience of any lawful order issued under the provisions of this Act by the Government, the Commissioner or Deputy Commissioner, the Area Committee or the Assistant Commissioner, or

(*c*) for any malfeasance, misfeasance, breach of trust or neglect of duty in respect of the trust, or

(*d*) for any misappropriation of, or improper dealing with, the properties of the institution, or

(*e*) for unsoundness of mind or other mental or physical defect or infirmity which unfits him for discharging the functions of the trustee.

(2) When it is proposed to take action under sub-section (1), the Commissioner or the Deputy Commissioner, as the case may be, shall frame charges against the trustee concerned and give him

CENTRAL LIBRARY

an opportunity of meeting such charges, of testing the evidence adduced against him and of adducing evidence in his favour ; and the order of suspension, removal or dismissal shall state the charges framed against the trustee, his explanation and the finding on each charge with the reasons therefor :

Provided that the Deputy Commissioner shall also consult the Area Committee before passing the final order under sub-section (1).

(3) Pending the disposal of the charges framed against the trustee, the Commissioner or the Deputy Commissioner may place the trustee under suspension and appoint a fit person to discharge the functions of the trustee.

(4) It shall be open to an Assistant Commissioner to move the Deputy Commissioner to take action under sub-section (1) in respect of any trustee of an institution over which an Area Committee has jurisdiction, and to place the trustee under suspension pending the orders of the Deputy Commissioner under sub-section (3).

(5) A trustee who is suspended, removed or dismissed under sub-section (1), may, within one month from the date of the receipt of the order of suspension, removal or dismissal, appeal against the order to the Commissioner if it was passed by a Deputy Commissioner, and to the Government if it was passed by the Commissioner.

Disqualifications of trustees.

46. (1) A non-hereditary trustee shall cease to hold his office if he—

(*a*) is sentenced by a criminal court to transportation or to imprisonment for a period of more than six months, for any offence other than an offence not involving moral turpitude, such sentence not having been cancelled or reduced to a period of six months or less, or the offence not having been pardoned, provided that the Government may direct that such sentence shall not operate as a disqualification ; or

(*b*) applies to be adjudicated or is adjudicated an insolvent.

(2) In cases of doubt or dispute, the Deputy Commissioner shall determine whether a trustee is disqualified under sub-section (1) or not.

CENTRAL LIBRARY

(3) If a hereditary trustee becomes subject to any of the disqualifications described in sub-section (1), the Deputy Commissioner may supersede the trustee.

(4) Any person affected by an order of the Deputy Commissioner under sub-section (2) or sub-section (3) may, within one month from the date of the receipt of the order by him, appeal against the order to the Commissioner.

Filling up of vacancies in the office of hereditary trustee.

47. (1) When a permanent vacancy occurs in the office of the hereditary trustee of a religious institution, the next in the line of succession shall be entitled to succeed to the office.

(2) When a temporary vacancy occurs in such an office by reason of the suspension of the hereditary trustee under section 45, sub-section (1), or by reason of his supersession under section 46, sub-section (3), the next in the line of succession shall be entitled to succeed and discharge the functions of the trustee until his disability ceases.

(3) When a permanent or temporary vacancy occurs in such an office and there is a dispute respecting the right of succession to the office, or

when such vacancy cannot be filled up immediately, or when a hereditary trustee is a minor and has no guardian fit and willing to act as such or there is a dispute respecting the person who is entitled to act as guardian, or

when a hereditary trustee is by reason of unsoundness of mind or other mental or physical defect or infirmity unfit for discharging the functions of the trustee,

the Deputy Commissioner may appoint a fit person to discharge the functions of the trustee of the institution until the disability of the hereditary trustee ceases or another hereditary trustee succeeds to the office or for such shorter term as the Deputy Commissioner may direct.

Explanation.—In making any appointment under this sub-section, the Deputy Commissioner shall have due regard to the claims of members of the family, if any, entitled to the succession.

CENTRAL LIBRARY

(4) Any person affected by an order of the Deputy Commissioner under sub-section (3) may, within one month from the date of the receipt of the order by him, appeal against the order to the Commissioner.

(5) Nothing in this section shall be deemed to affect anything contained in the Madras Court of Wards Act, 1902.

Appointment of office-holders and servants in religious institutions.

48. (1) Vacancies, whether permanent or temporary, amongst the office-holders or servants of a religious institution shall be filled up by the trustee in cases where the office or service is not hereditary.

(2) In cases where the office or service is hereditary, the next in the line of succession shall be entitled to succeed.

(3) Where, however, there is a dispute respecting the right of succession, or

where such vacancy cannot be filled up immediately, or

where the person entitled to succeed is a minor without a guardian fit and willing to act as such or there is a dispute respecting the person who is entitled to act as guardian, or

where the hereditary office-holder or servant is suspended from his office under section 49, sub-section (1),

the trustee may appoint a fit person to discharge the functions of the office or perform the service, until the disability of the office-holder or servant ceases or another person succeeds to the office or service, as the case may be.

Explanation.—In making any appointment under this sub-section, the trustee shall have due regard to the claims of members of the family, if any, entitled to the succession.

(4) Any person affected by an order of the trustee under sub-section (3) may, within one month from the date of the receipt of the order by him, appeal against the order to the Deputy Commissioner.

Punishment of office-holders and servants in religious institutions.

49. (1) All office-holders and servants attached to a religious institution or in receipt of any emolument or perquisite therefrom shall, whether the office or service is hereditary or not, be controlled by the

CENTRAL LIBRARY

trustee, and the trustee may, after following the prescribed procedure, if any, fine, suspend, remove or dismiss any of them for breach of trust, incapacity, disobedience of orders, neglect of duty, misconduct or other sufficient cause.

(2) Any office-holder or servant punished by a trustee under sub-section (1) may, within one month from the date of the receipt of the order by him, appeal against the order to the Deputy Commissioner.

(3) A hereditary office-holder or servant may, within one month from the date of the receipt by him of the order of the Deputy Commissioner under sub-section (2), prefer an appeal to the Commissioner against such order.

Power to fix fees for archanais and determine their apportionment.

50. Notwithstanding anything contained in any scheme settled or deemed to be settled under this Act, or any decree or usage to the contrary, the trustee of a temple shall have power, subject to such conditions as the Commissioner may, by general or special order, direct, to fix fees for the performance of archanais and to determine what portion, if any, of such fees shall be paid to the archakas or other office-holders or servants of the temple.

Fixing of standard scales of expenditure.

51. (1) The trustee of a religious institution may, from time to time, submit to the Area Committee if the institution is subject to the jurisdiction of such a Committee, and to the Commissioner in other cases, proposals for fixing the *dittam* or scale of expenditure in the institution, and the amounts which should be allotted to the various objects connected with such institution or the proportions in which the income or other property of the institution may be applied to such objects.

(2) The trustee shall publish such proposals at the premises of the institution and in such other manner as may be required by the Area Committee or the Commissioner, as the case may be, together with a notice stating that, within one month from the date of such publication, any person having interest may submit his objections or suggestions to the Area Committee or the Commissioner.

(3) After the expiry of the said period, the Area Committee or the Commissioner shall, after considering any objections and suggestions received, pass such order as it or he may think fit on such proposals,

CENTRAL LIBRARY

having regard to the established usage of the institution and its financial position ; and a copy of the order shall be communicated to the trustee.

(4) Against an order made by the Area Committee under sub-section (3), the trustee or any person having interest may, within one month from the date of the receipt of the order by the trustee, appeal to the Deputy Commissioner.

(5) The *dittam* or scale of expenditure for the time being in force in an institution shall not be altered by the trustee except in accordance with the procedure laid down in this section.

CHAPTER IV.

Maths.

Suit for the removal of trustee of math or specific endowment attached thereto.

52. (1) The Commissioner, or any two or more persons having interest and having obtained the consent in writing of the Commissioner, may institute a suit in the Court to obtain a decree for removing the trustee of a math or a specific endowment attached to a math, for any one or more of the following reasons, namely :—

(*a*) the trustee being of unsound mind ;

(*b*) his suffering from any physical or mental defect or infirmity which renders him unfit to be a trustee ;

(*c*) his having ceased to profess the Hindu religion or the tenets of the math ;

(*d*) his conviction for any offence involving moral turpitude ;

(*e*) breach by him of any trust created in respect of any of the properties of the religious institution ;

(*f*) persistent and wilful default by him in discharging his duties or functions under this Act or any other law.

(2) Where the Commissioner refuses to give consent under sub-section (1), the party aggrieved may, within three months from the date of the receipt of the order by him, appeal to the Government who may, after making such inquiry as they may consider necessary, confirm the order of the Commissioner or direct the Commissioner to give his consent in writing.

CENTRAL LIBRARY

Filling of vacancies.

53. (1) When a vacancy occurs in the office of the trustee of a math or specific endowment attached to a math and there is a dispute respecting the right of succession to such office, or

when such vacancy cannot be filled up immediately, or

when the trustee is a minor and has no guardian fit and willing to act as such or there is a dispute respecting the person who is entitled to act as guardian, or

when the trustee is by reason of unsoundness of mind or other mental or physical defect or infirmity unable to discharge the functions of the trustee,

the Assistant Commissioner may take such steps and pass such order as he thinks proper for the temporary custody and protection of the endowments of the math or of the specific endowment, as the case may be, and shall report the matter forthwith to the Commissioner.

(2) Upon the receipt of such report, if the Commissioner, after making such inquiry as he deems necessary, is satisfied that an arrangement for the administration of the math and its endowments or of the specific endowment, as the case may be, is necessary, he shall make such arrangement as he thinks fit until the disability of the trustee ceases or another trustee succeeds to the office, as the case may be.

(3) In making any such arrangement. the Commissioner shall have due regard to the claim of the disciples of the math, if any.

(4) Nothing in this section shall be deemed to affect anything contained in the Madras Court of Wards Act, 1902.

Fixing of standard scales of expenditure.

54. (1) The trustee of every math or specific endowment attached to a math may, from time to time, submit to the Commissioner proposals for fixing the *dittam* or scale of expenditure in the institution, and the amounts which should be allotted to the various objects connected with the institution or the proportions in which the income or other property of the institution may be applied to such objects.

(2) The trustee shall publish such proposals at the premises of the math and in such other manner as

CENTRAL LIBRARY

the Commissioner may direct, together with a notice stating that, within one month from the date of such publication, any person having interest may submit suggestions to the Commissioner.

(3) If on a scrutiny of such proposals, and any suggestions made by persons having interest, it appears to the Commissioner that the scale of expenditure or any item in the scale of expenditure is at variance with the established usage of the institution, or is not justified by its financial position, the Commissioner may call for the remarks of the trustee and if after considering the same, the Commissioner is of opinion that any modification is required in the scale of expenditure or any item in the scale of expenditure, he shall submit the case to the Government who shall pass orders thereon, and such orders shall be final.

Power to spend 'pathakanika.'

55. (1) The trustee of a math shall be entitled to spend at his discretion, for purposes connected with the math any 'pathakanika', that is to say, any gift of property or money made as a personal gift to him as the head of the math.

(2) The trustee shall keep regular accounts of all receipts and disbursements of the nature referred to in sub-section (1), and shall cause such accounts to be produced before the Commissioner or any person authorized by him in this behalf, whenever so required.

Appointment of manager of secular affairs of math.

56. (1) For the administration of the secular affairs of a math, the trustee of the math shall, when so required by the Commissioner, appoint a competent person as manager and report the name of the person so appointed, to the Commissioner ; and in default of such appointment, the Commissioner may himself make the appointment.

(2) The manager appointed under sub-section (1) shall be subordinate to the trustee of the math and shall, in addition to the trustee, be responsible for the due submission to the Commissioner of the registers, accounts and budgets of the math, and also for the performance of other statutory duties imposed upon the trustee by or under this Act.

CENTRAL LIBRARY

CHAPTER V.

Inquiries.

Deputy Commissioner to decide certain disputes and matters.

57. Subject to the rights of suit or appeal hereinafter provided, the Deputy Commissioner shall have power to inquire into and decide the following disputes and matters :—

(*a*) whether an institution is a religious institution ;

(*b*) whether a trustee holds or held office as a hereditary trustee ;

(*c*) whether any property or money is a religious endowment ;

(*d*) whether any property or money is a specific endowment ;

(*e*) whether any person is entitled, by custom or otherwise, to any honour, emolument or perquisite in any religious institution ; and what the established usage of a religious institution is in regard to any other matter ;

(*f*) whether any institution or endowment is wholly or partly of a religious or secular character ; and whether any property or money has been given wholly or partly for religious or secular uses ; and

(*g*) where any property or money has been given for the support of an institution which is partly of a religious and partly of a secular character, or the performance of any service or charity connected with such an institution or the performance of a charity which is partly of a religious and partly of a secular character or where any property or money given is appropriated partly to religious and partly to secular uses, as to what portion of such property or money shall be allocated to religious uses.

Power of Deputy Commissioner to frame schemes.

58. (1) When the Deputy Commissioner has reason to believe that in the interests of the proper administration of a religious institution, a scheme should be settled for the institution, or when not less than five persons having interest make an application in writing, stating that in the interests of the poprer administration of a religious institution a scheme should be settled for it, the Deputy Commissioner shall consult

CENTRAL LIBRARY

in the prescribed manner the trustee and the persons having interest and the Area Committee, if any, having jurisdiction over the institution ; and if, after such consultation, he is satisfied that it is necessary or desirable to do so, he shall, by order, frame a scheme of administration for the institution.

(2) A scheme settled under sub-section (1) for a temple or for a specific endowment other than one attached to a math may contain provision for—

(*a*) removing any existing trustee, whether hereditary or non-hereditary :

Provided that where provision is made in the scheme for the removal of a hereditary trustee, provision shall also be made therein for the appointment as trustee of the person next in succession who is qualified ;

(*b*) appointing a new trustee or trustees in the place of or in addition to any existing trustee or trustees ;

(*c*) defining the powers and duties of the trustee or trustees ;

(*d*) appointing, or directing the appointment of, a paid executive officer who shall be a person professing the Hindu religion, on such salary and allowances as may be fixed, to be paid out of the funds of the institution ; and defining the powers and duties of such officer :

Provided that in making any provision of the nature specified in clause (*b*) due regard shall be had to the claims of persons belonging to the religious denomination for whose benefit the institution is chiefly maintained.

(3) A scheme settled under sub-section (1) for a math or for a specific endowment attached to a math may contain provision for—

(*a*) associating one or more persons with the trustee or constituting a separate body for the purpose of participating or assisting in the whole or any part of the administration of the endowments of such math or of the specific endowment : provided that such person or persons or the members of such body shall be chosen from persons

CENTRAL LIBRARY

having interest in such math or endowment ;

(*b*) appointing or directing the appointment of a paid executive officer, who shall be a person professing the Hindu religion, on such salary and allowances as may be fixed by the Deputy Commissioner, to be paid out of the trust funds, and defining the powers and duties of such officer ;

(*c*) defining the powers and duties of the trustee.

(4) The Deputy Commissioner may determine what the properties of the religious institution are and append to the scheme a schedule containing a list of such properties :

Provided that such determination shall not affect the rights of persons who are in hostile possession of any of the said properties.

(5) Pending the framing of a scheme for a temple or for a specific endowment other than one attached to a math, the Deputy Commissioner may appoint a fit person to discharge all or any of the functions of the trustee thereof and define his powers and duties.

(6) The Deputy Commissioner may, at any time, after consulting the trustee and the persons having interest and the Area Committee, if any, having jurisdiction over the institution, by order, modify or cancel any scheme settled under sub-section (1) or a scheme settled by the Board under the Madras Hindu Religious Endowments Act, 1926.

(7) Every order of the Deputy Commissioner settling, modifying or cancelling a scheme under this section shall be published in the prescribed manner and on such publication shall, subject to the provisions of sections 61 and 62, be binding on the trustee, the executive officer and all persons having interest.

(8) The powers conferred by this section shall, in respect of maths, be exercised by the Commissioner or by a Deputy Commissioner to whom powers in this behalf have been delegated by the Commissioner under section 10, sub-section (2).

Appropriation of endowments.

59. (1) The Deputy Commissioner may, on being satisfied that the purpose of a religious institution has from the beginning been or has subsequently become,

CENTRAL LIBRARY

impossible of realization, by order, direct that the endowments of the institution be appropriated to all or any of the following purposes, namely :—

(*a*) the propagation of the religious tenets of the institution ;

(*b*) the establishment and maintenance of a university or college or other institution in which special provision is made for the study of Hindu religion, philosophy or sastras or for imparting instruction in Hindu temple architecture ;

(*c*) the establishment and maintenance of educational institutions where instruction to the Hindu religion is also imparted to Hindu students thereof ;

(*d*) promoting the study of Indian languages including Sanskrit ;

(*e*) promotion of the cultivation of Indian arts and architecture ;

(*f*) the establishment and maintenance of orphanages for Hindu children ;

(*g*) the establishment and maintenance of asylums for Hindus suffering from leprosy ;

(*h*) the establishment and maintenance of poor homes for destitute Hindus who are physically disabled and helpless ;

(*i*) the establishment and maintenance of hospitals and dispensaries for the benefit of Hindus ; and

(*j*) the grant of aid to any other religious institution which is poor or in needy circumstances :

Provided that in the case of a religious institution founded and maintained by a religious denomination or any section thereof the endowments shall, as far as possible, be utilized for the benefit of the denomination or section concerned for the purposes mentioned above.

(2) The Deputy Commissioner may at any time by order modify or cancel any order passed under subsection (1).

(3) The order of the Deputy Commissioner under this section shall be published in the prescribed manner and on such publication shall, subject to the

CENTRAL LIBRARY

provisions of section 61, be binding on the trustee, the executive officer and all persons having interest.

Determination and application of properties and funds of defunct religious institutions.

60. (1) The Deputy Commissioner may, on being satisfied that a religious institution has, whether before or after the commencement of this Act, ceased to exist, hold an inquiry in the prescribed manner to ascertain its properties and funds ; and after doing so, shall pass an order—

(*a*) specifying the properties and funds of the institution ;

(*b*) appointing a trustee therefor ;

(*c*) directing the recovery of any such properties or funds from any person who may be in possession thereof ; and

(*d*) laying down that the properties and funds so specified shall be applied or utilized for renovating the institution or if such renovation is not possible, be appropriated to any one or more of the purposes specified in section 59, sub-section (1).

(2) The Deputy Commissioner may, on being satisfied after holding an inquiry in the prescribed manner, that any building or other place which was being used for religious worship or instruction has, whether before or after the commencement of this Act, ceased to be used for that purpose, pass an order—

(*a*) directing the recovery of such building or place from any person who may be in possession thereof ; and

(*b*) laying down that it shall be used for religious worship or instruction as before, or if such use is not possible, be utilized for any one or more of the purposes specified in section 59, sub-section (1).

(3) Nothing contained in sub-section (1) or sub-section (2) shall be deemed to authorize the Deputy Commissioner to pass an order in respect of any property or funds which vested in any person before the commencement of this Act by the operation of the law of limitation.

(4) Every order of the Deputy Commissioner under sub-section (1) or sub-section (2) shall be published in the prescribed manner.

Appeal to the Commissioner.

61. (1) Any person aggrieved by any order passed by the Deputy Commissioner under any of the

CENTRAL LIBRARY

foregoing provisions of this Chapter may, within one month from the date of the publication of the order or of the receipt thereof by the party concerned, as the case may be, appeal to the Commissioner.

(2) Any order passed by the Commissioner on such appeal against which no suit lies to the Court under the next succeeding section, or in which no suit has been instituted in the Court within the time specified in section 62, sub-section (1), may be modified or cancelled by the Commissioner if the order has settled or modified a scheme for the administration of a religious institution or relates to any of the matters specified in section 59.

Suits and appeals.

62. (1) Any party aggrieved by an order passed by the Commissioner—

(i) under section 61, sub-section (1) or sub-section (2), and relating to any of the matters specified in section 57, section 58 or section 60 ; or

(ii) under section 57, section 58 or section 60 read with sub-section (1) (*a*), (2) or (4) (*a*) of section 19 or with sub-section (3) or (4) of section 80 ;

may, within ninety days from the date of the receipt of such order by him, institute a suit in the Court against such order ; and the Court may modify or cancel such order, but it shall have no power to stay the Commissioner's order pending the disposal of the suit.

(2) Any party aggrieved by a decree of the Court under sub-section (1) may, within ninety days from the date of the decree, appeal to the High Court.

(3) (*a*) Any scheme for the administration of a religious institution settled or modified by the Court in a suit under sub-section (1) or on an appeal under sub-section (2) or any scheme deemed under section 103, clause (*d*) to have been settled or modified by the Court may, at any time, be modified or cancelled by the Court on an application made to it by the Commissioner, the trustee or any person having interest.

(*b*) Any party aggrieved by an order of the Court under clause (*a*) may, within ninety days from the date of the order, appeal to the High Court.

CENTRAL LIBRARY

CHAPTER VI.

Notified Religious Institutions.

Issue of notice to show cause why institution should not be notified.

63. (1) Notwithstanding that a religious institution is governed by a scheme settled or deemed to have been settled under this Act, where the Commissioner has reason to believe that such institution is being mismanaged and is satisfied that in the interests of its administration, it is necessary to take proceedings under this Chapter, the Commissioner may, by notice published in the prescribed manner, call upon the trustee and all other persons having interest to show cause why such institution should not be notified to be subject to the provisions of this Chapter.

(2) Such notice shall state the reasons for the action proposed, and specify a reasonable time, not being less than one month from the date of the issue of the notice for showing such cause.

(3) The trustee or any person having interest may thereupon prefer any objection he may wish to make to the issue of a notification as proposed.

(4) Such objection shall be in writing and shall reach the Commissioner before the expiry of the time specified in the notice aforesaid or within such further time as may be granted by the Commissioner.

Consideration of objections, if any, and notification of institution.

64. (1) Where no such objection has been received within the time so specified or granted, the Government may, on receipt of a report from the Commissioner to that effect, by notification published in the *Fort St. George Gazette* declare the religious institution to be subject to the provisions of this Chapter.

(2) Where any such objections have been received within the time so specified or granted, the Commissioner shall hold an inquiry into the objections in the manner prescribed, and decide whether the institution should be notified to be subject to the provisions of this Chapter or not.

(3) If the Commissioner decides that the institution should be notified as aforesaid, he shall make a report to that effect to the Government who may, thereupon, by notification published in the *Fort St. George Gazette*, declare the religious institution to be subject to the provisions of this Chapter.

CENTRAL LIBRARY

(4) Every notification published under this section shall remain in force for a period of five years from the date of its publication ; but the Government may, at any time, on an application made to them, cancel the notification.

Scheme to lapse on notification.

65. On the publication of the notification the scheme of administration, if any, settled for the religious institution, whether before or after the commencement of this Act, and all rules, if any, framed under such scheme shall cease to apply to the institution ; and such scheme and rules shall not be deemed to be revived by reason of the cancellation of the notification or by reason of its having ceased to be in force by efflux of time.

Appointment of salaried executive officer.

66. (1) For every institution notified under this Chapter, the Commissioner shall as soon as may be appoint a salaried executive officer, who shall be a person professing the Hindu religion.

(2) The salary and allowances of the executive officer, as determined by the Commissioner, shall be paid from the funds of the religious institution.

Term of office and duties of executive officer.

67. (1) The executive officer shall hold office for such period as may be fixed by the Commissioner and he shall exercise such powers and perform such duties as may be assigned to him by the Commissioner :

Provided that only such powers and duties as appertain to the administration of the endowments of the religious institution shall be assigned to the executive officer.

(2) The Commissioner shall define the powers and duties which may be exercised and performed respectively by the executive officer and the trustee, if any, of the religious institution.

(3) The executive officer shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Removal of executive officer.

68. The Commissioner may, for good and sufficient cause, suspend, remove or dismiss the executive officer.

Section 58 not to apply to notified institutions.

69. Section 58 shall not apply to, and no Area Committee shall have jurisdiction over, any religious institution notified under this Chapter or under Chapter VI-A of the Madras Hindu Religious Endowments Act, 1926, so long as the notification remains in force.

CENTRAL LIBRARY

CHAPTER VII.

Budgets, Accounts and Audit.

Budgets of religious institutions.

70. (1) The trustee of every religious institution shall, before the end of March in each year, submit, in such form as may be fixed by the Commissioner, a budget showing the probable receipts and disbursements of the institution during the following fasli year—

(*a*) to the Area Committee, if the institution is subject to the jurisdiction of such a Committee ; and

(*b*) to the Commissioner, in other cases.

(2) Every such budget shall make adequate provisions for—

(*a*) the *dittam* or scale of expenditure for the time being in force ;

(*b*) the due discharge of all liabilities binding on the institution ;

(*c*) the repair and renovation of the buildings connected with the institution, the provision made under this clause not being less than ten per centum of its income in the case of an institution assessed to contribution under section 76 for the previous fasli year on an income not exceeding three thousand rupees, and not being less than twenty-five per centum of its income or ten per centum of its income up to three thousand rupees and the whole of the excess of its income over that amount, whichever is less, in the case of any other institution :

Provided that any institution the income of which does not exceed or does not sufficiently exceed the expenditure referred to in clauses (*a*) and (*b*) may be exempted by the Commissioner, in whole or in part as the case may be, from the requirement of this clause ;

(*d*) the maintenance of a working balance.

(3) The Area Committee or the Commissioner, as the case may be, may, after giving notice to the trustee in the prescribed manner and after considering his representations, if any, make such alterations,

CENTRAL LIBRARY

omissions or additions in the budget as the Area Committee or the Commissioner may deem fit.

(4) Against an order made by the Area Committee under sub-section (3), a trustee may, within one month from the date of the receipt by him of the order, appeal to the Deputy Commissioner.

Accounts and audit.

71. (1) The trustee of every religious institution shall keep regular accounts of all receipts and disbursements.

(2) The accounts of every religious institution, the annual income of which as calculated for the purposes of section 76 for the fasli year immediately preceding is not less than sixty thousand rupees, shall be subject to concurrent audit, that is to say, the audit shall take place as and when expenditure is incurred.

(3) The accounts of every other religious institution shall be audited annually or if the Commissioner so directs in any case or class of cases, at shorter intervals.

(4) The audit shall be made—

(*a*) in the case of a religious institution the annual income of which calculated as aforesaid for the fasli year immediately preceding is not less than one thousand rupees, by auditors appointed in the prescribed manner, who shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code ;

(*b*) in the case of any other religious institution, by an officer or servant subordinate to the Commissioner and deputed by him for the purpose.

Authority to whom audit report is to be submitted.

72. After completing the audit for any year or shorter period, or for any transaction or series of transactions, as the case may be, the auditor shall send a report—

(*a*) to the Area Committee if the institution is subject to the jurisdiction of such a Committee ; and

(*b*) to the Commissioner, in other cases.

Contents of audit report.

73. (1) The auditor shall specify in his report all cases of irregular, illegal or improper expenditure, or of failure to recover moneys or other property due to the religious institution, or of loss or waste of

CENTRAL LIBRARY

money or other property thereof, caused by neglect or misconduct.

(2) The auditor shall also report on such other matter relating to the accounts as may be prescribed, or on which the Commissioner or the Area Committee concerned, as the case may be, may require him to report.

Rectification of defects disclosed in audit and order of surcharge against trustee, etc.

74. (1) The Area Committee or the Commissioner, as the case may be, shall send a copy of every audit report relating to the accounts of a religious institution to the trustee thereof, and it shall be the duty of such trustee to remedy any defects or irregularities pointed out by the auditor and report the same to the Area Committee or the Commissioner, as the case may be.

(2) The Area Committee shall forward to the Commissioner a copy of every audit report received by it under clause (*a*) of section 72 and the report, if any, of the trustee made under sub-section (1), together with such remarks as the Area Committee may wish to make thereon.

(3) If, on a consideration of the report of the auditor along with the report, if any, of the trustee, and the remarks, if any, of the Area Committee, the Commissioner thinks that the trustee or any other person was guilty of misappropriation or wilful waste of the funds of the institution or of gross neglect resulting in a loss to the institution, the Commissioner may, after giving notice to the trustee or such person to show cause why an order of surcharge should not be passed against him and after considering his explanation, if any, by order, certify the amount so lost and direct the trustee or such person to pay within a specified time such amount personally and not from the funds of the religious institution :

Provided that if, in respect of any expenditure or dealing with trust property, the trustee or such person had obtained the directions of the Area Committee or of the Commissioner and had acted in accordance with such directions, he shall not be held responsible.

(4) The Commissioner shall forward a copy of the order under sub-section (3) with the reasons for the same, by registered post to the trustee or person concerned.

CENTRAL LIBRARY

(5) The trustee or other person aggrieved by such order may, within thirty days of the receipt by him of the order, either—

(*a*) apply to the Court to modify or set aside the order and the Court, after taking such evidence as is necessary, may confirm, modify or remit the surcharge with such orders as to costs as it may think appropriate in the circumstances, or

(*b*) in lieu of such application may appeal to the Government who shall pass such orders as they think fit.

(6) Neither the Court nor the Government to which or to whom an application or appeal is made under sub-section (5) shall have power to stay the operation of the order pending the disposal of the application or appeal.

(7) An order of surcharge under this section against a trustee shall not bar a suit for accounts against him except in respect of the matter finally dealt with by such order.

(8) The Collector of the district in which is situated any property of the trustee or other person from whom an amount is recoverable by way of surcharge shall, on a requisition made by the Commissioner, recover such amount as if it were an arrear of land revenue and pay the same to the religious institution concerned.

Chapter to apply notwithstanding provision in scheme.

75. The provisions of this Chapter shall apply to every religious institution, notwithstanding anything to the contrary contained in any scheme settled or deemed to be settled under this Act.

CHAPTER VIII.

Finance.

Religious institutions, to pay an annual contribution to the Government.

76. (1) In respect of the services rendered by the Government and their officers, every religious institution shall, from the income derived by it, pay to the Government annually such contribution not exceeding five per centum of its income as may be prescribed.

(2) Every religious institution, the annual in-

CENTRAL LIBRARY

come of which, for the falsli year immediately preceding as calculated for the purposes of the levy of contribution under sub-section (1), is not less than one thousand rupees, shall pay to the Government annually, for meeting the cost of auditing its accounts, such further sum not exceeding one and a half per centum of its income as the Commissioner may determine.

(3) The annual payments referred to in sub-sections (1) and (2) shall be made, notwithstanding anything to the contrary contained in any scheme settled or deemed to be settled under this Act for the religious institution concerned.

(4) The Government shall pay the salaries, allowances, pensions and other beneficial remuneration of the Commissioner, Deputy Commissioners, Assistant Commissioners and other officers and servants (other than executive officers of religious institutions) employed for the purposes of this Act and the other expenses incurred for such purposes, including the expenses of Area Committees and the cost of auditing the accounts of religious institutions.

Recovery of costs and expenses incurred on legal proceedings.

77. All costs, charges and expenses incurred by the Government, the Commissioner, a Deputy Commissioner, an Area Committee or an Assistant Commissioner as a party to, or in connexion with, any legal proceeding in respect of any religious institution shall be payable out of the funds of such institution, except in cases where a liability to pay the same has been laid on any party or other person personally and the right to reimbursement under this section has been negatived in express terms.

Assessment and recovery of contributions and costs and expenses.

78. (1) The contributions, costs and expenses payable under sections 76 and 77 shall be assessed on and notified to the trustee of the religious institution concerned in the prescribed manner.

(2) (*a*) Such trustee may, within fifteen days from the date of the receipt of such notice or within such further time as may be granted by the Commissioner, prefer his objection thereto, if any, to the Commissioner in writing. Such objection may relate either to his liability to pay or to the amount specified in the notice. The Commissioner shall consider such objection and give his decision confirming, withdrawing or modifying his original notice.

CENTRAL LIBRARY

(*b*) Within one month from the date of receipt of the notice of assessment, or when objection has been preferred, within one month from the date of the decision of the Commissioner, or within such further time as may be granted by him, such trustee shall pay the amount specified in the original notice or the amount as fixed by the Commissioner on objection.

(3) If the trustee fails to pay the amount aforesaid within the time allowed, the Collector of the district in which any property of the religious institution is situated shall, on requisition made to him in the prescribed manner by the Commissioner and subject to the provisions of this section recover such amount as if it were an arrear of land revenue.

(4) (*a*) On receipt of a requisition under sub-section (3), the Collector shall issue a notice to the trustee concerned—

(i) requiring him, within fifteen days from the service thereof, to pay the amount mentioned in the requisition and specified in the notice ; and

(ii) stating that on default, such amount will be recovered as if it were an arrear of land revenue.

(*b*) If, within the period of fifteen days aforesaid, the amount demanded is not paid, the Collector shall proceed to recover the amount specified in the notice (with the charges of collection) as if it were an arrear of land revenue.

(5) The Collector shall, on receipt of a requisition under sub-section (3), withhold the amount mentioned therein out of the tasdik or any other allowance payable by the Government to the religious institution concerned, but where the tasdik or other allowance is insufficient for the purpose, the Colector shall withhold the amount available, and recover the balance as if it were an arrear of land revenue.

(6) Places of worship, including temples and tanks and places where utsavams are performed, idols, vahanams, jewels and such vessels and other articles of the religious institution as may be necessary in accordance with the usage of the institution for purposes of worship or processions shall not be liable to

CENTRAL LIBRARY

be proceeded against in pursuance of sub-sections (3), (4) and (5).

(7) Instead of selling the property after attachment thereof under the provisions of the Madras Revenue Recovery Act, 1864, it shall be open to the Collector at the instance of the Commissioner to appoint a Receiver to take posession of the property or such portion thereof as may be necessary and collect the income thereof until the amount sought to be recovered is realized. The remuneration, if any, paid to the Receiver, and the other expenses incurred by him shall be paid out of the income of the institution concerned.

(8) No suit, prosecution or other legal proceeding shall be entertained in any Court of law against the Government or any officer or servant of the Government for anything done or intended to be done in good faith in pursuance of this section.

Contribution not to be levied for more than three faslis immediately preceding the fasli in which a notice of assessment is issued.

79. (1) It shall not be competent for the Commissioner to levy any contribution for more than three faslis immediately preceding the fasli in which a notice of assessment is issued under section 78.

(2) Nothing in this section shall affect any levy of contribution made or moneys collected by the Board before the commencement of the Madras Hindu Religious Endowments (Amendment) Act, 1946.

CHAPTER IX.

The Tirumalai-Tirupati Devasthanams.

Application of Act to Tirumalai-Tirupati Devasthanams.

80. (1) The provisions of this Chapter shall apply to the Tirumalai-Tirupati Devasthanams.

(2) Sections 58 and 63 to 69 of this Act shall not apply to the Devasthanams.

(3) The other provisions of this Act shall apply to the Devasthanams as if they constituted a single religious institution included in the list published under section 38 and subject to the following modifications, namely :—

(*a*) There shall be a Board of Trustees constituted for the Devasthanams consisting of five persons appointed by the Government ; and any person so appointed shall hold office for a term of five years unless

CENTRAL LIBRARY

in the meanwhile he is removed or his resignation is accepted by the Government or he otherwise ceases to be a trustee.

(*b*) The Government shall also appoint a salaried executive officer for the Devasthanams, and shall have power to suspend, remove or dismiss him from office.

(*c*) All powers and duties assigned by the provisions aforesaid to a Deputy or an Assistant Commissioner shall be deemed to have been assigned to the Commissioner instead.

(4) The provisions of this Act shall apply to every specific endowment attached either to the Devasthanams as a whole or to any temple or institution thereof as if all powers and duties assigned therein to a Deputy or an Assistant Commissioner had been assigned to the Commissioner instead.

Qualification of executive officer and payment of salary, allowances, etc.

81. (1) The executive officer shall be a person professing the Hindu religion.

(2) If the executive officer is an officer in the service of the Government, the Devasthanams shall pay his salary, allowances and such contributions towards his pension, provident fund and leave allowances as may be required under the rules prescribed by the Government in this behalf.

Powers and duties of executive officer.

82. Subject to such reservations as may be laid down by the Government and to the general control of the Board of Trustees, the executive officer—

(*a*) shall have power to manage the properties and affairs of the Devasthanams ;

(*b*) shall be responsible for the proper custody of all the records and of all the jewels, valuables, moneys, funds and other properties of the Devasthanams ;

(*c*) shall arrange for the proper collection of the income and for the incurring of expenditure ; and

(*d*) may, in cases of emergency, direct the execution of any work or the doing of any act which is not provided for in the budget for the year and the immediate execution or the doing of which is, in his opinion, necessary for the preservation of the properties of the Devasthanams or for the service or safety of the pilgrims resorting

UNIVERSITY OF CALCUTTA · ADVANCEMENT OF LEARNING · CENTRAL LIBRARY

thereto ; and may direct that the expenses of executing such work or the doing of such act shall be paid from the funds of the Devasthanams.

The executive officer shall report forthwith to the Board of Trustees any action taken by him under clause (*d*) and the reasons therefor.

Appointment and punishment of office-holders and servants by executive officer in certain cases.

83. (1) The powers of appointment and punishment conferred on a trustee by sections 48 and 49 shall, in respect of the office-holders and servants of the Devasthanams, be exercised by the executive officer subject to such restrictions and conditions, if any, as may be laid down by the Government.

(2) Any person affected by an order of the executive officer acting in pursuance of the powers conferred on him by sub-section (1) may, within one month from the date of the receipt of the order by him, appeal to the Board of Trustees.

(3) Within one month from the date of the receipt by him of the order of the Board of Trustees, the office-holder or servant may appeal to the Commissioner.

Application of Madras Village Panchayats Act and other enactments to Tirumalai Hills area.

84. (1) The Government may, by notification in the *Fort St. George Gazette*, declare that any of the provisions of the Madras Village Panchayats Act, 1950, or of the Madras Public Health Act, 1939, or of any rules made under those Acts, shall be extended to, and be in force in, the Tirumalai Hills area as notified by the Government in the *Fort St. George Gazette* from time to time.

(2) The provisions so notified shall be construed with such modifications not affecting the substance as may be necessary or proper for the purpose of adapting them to the Tirumalai Hills area.

(3) Without prejudice to the generality of the foregoing provision—

(i) the Tirumalai Hills area shall be deemed to be a village for the purposes of the Madras Village Panchayats Act, 1950. and a local area for the purposes of the Madras Public Health Act, 1939 ;

(ii) all references to a panchayat or the president, executive officer or executive authority thereof in the Madras Village Panchayats Act, 1950, and all references

CENTRAL LIBRARY

to a local authority, executive authority or executive officer in the Madras Public Health Act, 1939, shall, subject to the provisions of clauses (iii) and (iv), be construed as references to the executive officer, in the Tirumalai Hills area ;

(iii) any appeal provided for by or under the Madras Village Panchayats Act, 1950, from an order or decision of the president, executive authority or executive officer of a panchayat to the panchayat shall lie instead to the Inspector of Municipal Councils and Local Boards ;

(iv) any appeal provided for by or under the Madras Public Health Act, 1939, from an order or decision of the executive authority or executive officer of a local authority to the local authority shall lie instead to the Director of Public Health.

(4) (*a*) The Government may, by notification in the *Fort St. George Gazette*, authorize the executive officer to levy tolls, in the prescribed manner in respect of any road, including the ghat road leading to Tirumalai from Tirupati which has been or shall hereafter be constructed entirely from the funds of the Devasthanams and situated within the Tirumalai Hills area as notified under sub-section (1), at such rates and for such period as may be specified in the notification.

(*b*) The executive officer may—

(i) place the collection of such tolls under the management of such persons as may appear to him proper, or

(ii) farm out such colection on such terms and conditions as he may think fit.

(*c*) The provisions of sections 3 to 7 of the Indian Tolls Act, 1851, as in force for the time being in the State of Madras, shall apply to the collection of such tolls and the persons under whose management the collection of such tolls may be placed, as well as the persons to whom such collections may be farmed out and their agents and servants shall be deemed to be persons appointed to collect tolls within the meaning of that Act.

CENTRAL LIBRARY

Purposes for which Devasthanam funds may be used.

85. The funds of the Devasthanams may be utilized for any purpose permitted by any other provision of this Act and also for all or any of the following purposes :—

(i) the maintenance, management and administration of the Devasthanams ;

(ii) the maintenance of the educational institutions referred to in Schedule III ;

(iii) the foundation and maintenance of hospitals and dispensaries for the relief of the pilgrims and worshippers visiting the temples;

(iv) the construction and maintenance of choultries and rest-houses for the use and accommodation of all classes of pilgrims ;

(v) the provision of water-supply and other sanitary arrangements to the pilgrims ;

(vi) the establishment and maintenance of a veterinary hospital for the animals of the Devasthanams ;

(vii) the acquisition of any land or other immovable property for the purposes of the Devasthanams provided the acquisition is authorized by the Government ;

(viii) the construction and maintenance of roads and communications and the lighting thereof for the convenience of the pilgrims and worshippers ;

(ix) the training of archakas to perform the religious worship and ceremonies in the Devasthanams, and the training of adhyapakas and vedaparayanikas ; and

(x) any work or undertaking for the purposes of the Devasthanams, authorized by the Government, so long as such authorization subsists.

CENTRAL LIBRARY

CHAPTER X.

Miscellaneous.

Public officers to furnish copies of or extracts from certain documents.

86. All public officers having custody of any record, register, report or other document relating to a religious institution or any movable or immovable property thereof shall furnish such copies of or extracts from the same as may be required by the Commissioner, a Deputy Commissioner, an Area Committee, or an Assistant Commissioner.

Putting trustee or executive officer in possession.

87. Where a person has been appointed—

(*a*) as trustee or executive officer of a religious institution, or

(*b*) to discharge the functions of a trustee of a religious institution in accordance with the provisions of this Act, or

(*c*) as manager under section 56 or in any scheme framed by the Board before the commencement of this Act,

and such person is resisted in, or prevented from, obtaining possession of the religious institution or of the records, accounts and properties thereof, by a trustee, office-holder or servant of the religious institution who has been dismissed or suspended from his office or is otherwise not entitled to be in possession or by any person claiming or deriving title from such trustee, office-holder or servant, not being a person claiming in good faith to be in possession on his own account or on account of some person not being such trustee, office-holder or servant, any Magistrate of the first class in whose jurisdiction such institution or property is situated shall, on application by the person so appointed, and on the production of the order of appointment and where the application is for possession of property, of a certificate by the Commissioner in the prescribed form setting forth that the property in question belongs to the reli-

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

gious institution, direct delivery to the person appointed as aforesaid of the possession of such religious institution, or the records, accounts and properties thereof, as the case may be :

Provided however that before issuing any such certificate in respect of any property, the Commissioner shall give notice to the trustee, office-holder or servant of the religious institution, as the case may be, of his intention to issue the certificate and consider the objections, if any, of such trustee, office-holder or servant :

Provided also that for the purpose of proceedings under this section, the certificate aforesaid shall be conclusive evidence, that the properties to which it relates belong to the religious institution :

Provided further that nothing contained in this section shall bar the institution of a suit by any person aggrieved by an order under this section for establishing his title to the said property.

Explanation.—A person claiming under an alienation contrary to the provisions of section 29 or 35 shall not be regarded as a person claiming in good faith within the meaning of this section.

Cost of proceedings, etc.

88. (1) The costs, charges and expenses of and incidental to any suit, appeal or application to a Court under this Act shall be in the discretion of the Court, which may, subject to the provisions of section 77, direct the whole or any part of such costs, charges and expenses to be met from the property or income of the religious institution or endowment concerned or to be borne and paid in such manner and by such persons as it thinks fit.

(2) The costs, charges and expenses of and incidental to any appeal, application or other proceeding before the Commissioner or a Deputy Commissioner shall be in his discretion and he shall have full power to determine by whom or out of what funds and to what extent such costs, charges and expenses are to be paid ; and the order passed in this regard may be transferred for execution to the Court and shall be executed by the Court as if the order had been passed by itself if and in so far as the Court considers the order to be a reasonable one.

CENTRAL LIBRARY

Penalty for refusal by trustee to comply with provisions of Act.

89. (1) If any trustee [including the executive officer or other person in whom the administration of a religious institution is vested] or any agent of, or person working under, the trustee—

(*a*) refuses, neglects or fails to comply with the provisions of section 25 or section 26, or

(*b*) refuses, neglects or fails to furnish such accounts, returns, reports or other information relating to the administration of the religious institution or its funds, property or income or the application thereof, at such time and in such manner as the Commissioner, Deputy Commissioner, Area Committee or Assistant Commissioner may require, or

(*c*) refuses to permit, or causes obstruction to, inspection by the Commissioner. a Deputy Commissioner, a member of an Area Committee duly authorized in this behalf or an Assistant Commissioner, of any movable or immovable property belonging to, or of any records, correspondence, plans. accounts and other documents relating to, the religious institution, or neglects or fails to produce them for inspection,

the trustee, or where there is more than one trustee, each of the trustees shall be punishable with fine which may extend to two hundred rupees ; and in case the act or default complained of continues for more than one month with a further fine which may extend to one hundred rupees for every week or part thereof during which the act or default so continues.

(2) No Court shall take cognizance of an offence punishable under sub-section (1) except on the complaint in writing of the Commissioner.

(3) No offence punishable under sub-section (1) shall be inquired into or tried by any Court inferior to that of a Magistrate of the first class.

(4) The Commisioner may accept from any trustee who has committed or is reasonably suspected of having committed any of the offences referred to in sub-section (1), by way of composition of such

CENTRAL LIBRARY

offence, a sum of money not exceeding one thousand rupees.

(5) Any fine imposed under sub-section (1) or any money payable by way of composition under sub-section (4) shall be paid by the trustee from his own funds and not from the funds of the religious institution concerned.

Court-fees to be paid as prescribed by Schedule I.

90. Notwithstanding anything contained in the First or the Second Schedule to the Court-fees Act, 1870, the proper fees for the documents described in columns (1) and (2) of Schedule I shall be the fees indicated in column (3) thereof.

Saving.

91. Nothing contained in this Act shall—

(*a*) save as otherwise expressly provided in or under this Act, affect any honour, emolument or perquisite to which any person is entitled by custom or otherwise in any religious institution, or its established usage in regard to any other matter; or

(*b*) authorize any interference with the religious and spiritual functions of the head of a math including those relating to the imparting of religious instruction or the rendering of spiritual service.

Act not to affect rights under Article 26, clauses (*a*) to (*c*) of the Constitution.

92. Nothing contained in this Act shall be deemed to confer any power or impose any duty in contravention of the rights conferred on any religious denomination or any section thereof by clauses (*a*), (*b*) and (*c*) of Article 26 of the Constitution.

Bar of suits in respect of administration or management of religious institution, etc.

93. No suit or other legal proceeding in respect of the administration or management of a religious institution or any other matter or dispute for determining or deciding which provision is made in this Act shall be instituted in any Court of law, except under, and in conformity with, the provisions of this Act.

Property of religious institutions not to vest under the law of limitation after commencement of this Act.

94. Nothing contained in any law of limitation for the time being in force shall be deemed to vest in any person the property or funds of any religious institution which had not vested in such person or his predecessor-in-title before the commencement of this Act.

CENTRAL LIBRARY

Procedure and powers at inquiries under Chapters V and VI.

95. (1) Where a Commissioner or a Deputy Commissioner makes an inquiry or hears an appeal under Chapter V or Chapter VI, the inquiry shall be made and the appeal shall be heard, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits or the hearing of appeals, as the case may be.

(2) The provisions of the Indian Evidence Act, 1872, and the Indian Oaths Act, 1873, shall apply to such inquiries and appeals.

(3) The Commissioner or a Deputy Commissioner holding such an inquiry or hearing such an appeal shall be deemed to be a person acting judicially within the meaning of the Judicial Officers Protection Act, 1850.

Notifications, orders, etc., under Act not to be questioned in Court of law.

96. Save as otherwise expressly provided in this Act, no notification or certificate issued, order passed, decision made, proceedings or action taken, scheme settled, or other thing done under the provisions of this Act by the Government, the Commissioner or a Deputy Commissioner, an Area Committee, or an Assistant Commissioner, shall be liable to be questioned in any Court of law.

Budget, audit report, etc., to be submitted to Area Committee through Assistant Commissioner.

97. Any budget, audit report, accounts, returns, reports or other documents and any information required to be submitted to, or called for by, an Area Committee in respect of an institution subject to its jurisdiction, and all communications intended for an Area Committee shall be sent to the Assistant Commissioner concerned and shall be placed by him before the Committee at its next meeting, together with his remarks or recommendations thereon, if any.

Power of Assistant Commissioner to act for Area Committee in an emergency.

98. The Assistant Commissioner may, in cases of emergency, direct the doing of any act which would ordinarily have to be done by the Area Committee, if the immediate doing of such act is, in his opinion, necessary in the interests of a religious institution :

Provided that the Assistant Commissioner shall not act under this section in contravention of any order of the Area Committee prohibiting the doing of any particular act :

Provided further that he shall report the action taken under this section and the reasons therefor to the Committee at its next meeting ; and the Commi-

CENTRAL LIBRARY

ttee may annul, modify or reverse the order passed by the Assistant Commissioner.

Power of Government to call for records and pass orders.

99. (1) The Government may call for and examine the record of the Commissioner or any Deputy or Assistant Commissioner, of any Area Committee or of any trustee in respect of any proceeding, not being a proceeding in respect of which a suit or an appeal to a Court is provided by this Act, to satisfy themselves as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed therein ; and, if, in any case, it appears to the Government that any such decision or order should be modified, annulled, reversed or remitted for reconsideration they may pass orders accordingly :

Provided that the Government shall not pass any order prejudicial to any party unless he has had a reasonable opportunity of making his representations.

(2) The Government may stay the execution of any such decision or order, pending the exercise of their powers under sub-section (1) in respect thereof.

Power to make rules.

100. (1) The Government may make rules to carry out all or any of the purposes of this Act and not inconsistent therewith.

(2) In particular, and without prejudice to the generality of the foregoing power, they shall have power to make rules with reference to the following matters :—

(*a*) all matters expressly required or allowed by this Act to be prescribed ;

(*b*) the form and manner in which applications and appeals should be submitted to the Government, the Commissioner, or a Deputy or an Assistant Commissioner ;

(*c*) the powers of the Government the Commissioner, or a Deputy or an Assistant Commmissioner to hold inquiries, to summon and examine witnesses and to compel the production of documents ;

(*d*) the inspection of documents and the fees to be levied for such inspection ;

(*e*) the fees to be levied for the issue and service of processes and notices ;

(*f*) the grant of certified copies and the fees to be levied therefor ;

(*g*) the budgets, reports, accounts, returns or

CENTRAL LIBRARY

other information to be submitted by trustees ;

(*h*) the convening of meetings of trustees and the quorum for, and the conduct of business at, such meetings ;

(*i*) the manner in which the opinions of trustees shall be ascertained otherwise than at meetings ;

(*j*) the proper collection of the income of and the incurring of expenditure by, religious institutions ;

(*k*) the custody of the moneys of religious institutions, their deposit in, and withdrawal from, banks, and the investment of such moneys ;

(*l*) the custody of jewels and other valuables and documents of religious institutions ;

(*m*) the manner in which and the period for which leases of properties of religious institutions shall be made ;

(*n*) the manner in which the accounts of religious institutions shall be audited and published, the time and place of audit and the form and contents of the auditor's report ;

(*o*) the method of calculating the income of a religious institution for the purpose of levying contribution and the rate at which it shall be levied ;

(*p*) the security, if any, to be furnished by officers and servants employed for the purposes of this Act ;

(*q*) the preservation, maintenance, management and improvement of the properties and buildings of religious institutions ;

(*r*) the inspection and supervision of the properties and buildings of religious institutions, the reports to be submitted by persons making such inspection and supervision and the fees leviable for such inspection, supervision and report ;

(*s*) the preservation of the images in temples ;

(*t*) the grant of travelling and halting allowances to the members of the Area Committees or to the trustees ;

(*u*) the preparation and sanction of the esti-

CENTRAL LIBRARY

mates and acceptance of tenders, in respect of public works and for supplies in religious institutions including the Tirumalai-Tirupati Devasthanams ;

(*v*) the levy of tolls on roads constructed entirely from the funds of the Tirumalai-Tirupati Devasthanams and situated within the Tirumalai Hills area and the collection thereof ;

(*w*) the delegation by the executive officer of the Tirumalai-Tirupati Devasthanams of his powers, functions and duties to any officer or servant of the Devasthanams and the restrictions, limitations and conditions subject to which such delegation shall be made ;

(*x*) the qualifications, method of recruitment, pay, grant of leave, leave allowance and travelling allowance, personal conduct and punishment, of—

(i) officers and servants constituting the establishment of the Tirumalai-Tirupati Devasthanams ;

(ii) executive officers appointed for religious institutions under any provision of this Act or in pursuance of any scheme settled or deemed to be settled thereunder ;

(*y*) the qualifications to be possessed by the officers and servants for appointment to non-hereditary officers (offices ?) in religious institutions, the qualifications to be possessed by hereditary servants for succession to office and the conditions of service of all such officers and servants ;

(*z*) the grant of pensions or gratuities to officers and servants of the Board who retired before the commencement of this Act ; and

(*aa*) the grant of gratuities to the heirs of deceased officers and servants of the Board including those who had retired before the commencement of this Act.

(3) The power to make rules under this section shall be subject to the condition of previous publication.

CENTRAL LIBRARY

CHAPTER XI.

Transitional.

Abolition of Board and devolution of its assets and liabilities.

101. On and from the date on which this Act comes into force, the Board shall cease to exist, and all its assets and liabilities shall devolve on the Government.

Construction of reference to the Board President or Commissioner.

102. Any reference to the Board or its President or a Commissioner thereof contained in any enactment in force in the State of Madras or in any notification, order, scheme, rule, form or bye-law made under any such enactment and in force in the State, shall, on and from the commencement of this Act, be construed as a reference to the Commissioner appointed under this Act.

Effect of repeal of the Madras Hindu Religious Endowments Act, 1926.

103. Notwithstanding the repeal of the Madras Hindu Religious Enodwments Act, 1926 (hereinafter in this section referred to as the said Act)—

(*a*) all rules made, notifications or certificates issued, orders passed, decisions made, proceedings or action taken, schemes settled and things done by the Government, the Board or its President or by an Assistant Commissioner under the said Act, shall, in so far as they are not inconsistent, with this Act, be deemed to have been made, issued, passed, taken, settled or done by the appropriate authority under the corresponding provisions of this Act and shall, subject to the provisions of clause (*b*), have effect accordingly ;

Explanation.—Certificates issued by the Board under section 78 of the said Act shall be deemed to have been validly issued under that section, notwithstanding that the certificates were issued before the making of rules prescribing the manner of their issue.

(*b*) if the Government are satisfied that any such rule, notification, certificate order, decision, proceeding, action, scheme or thing, although not inconsistent with his Act would not have been made, issued, passed, taken, settled or done, or would not have been made, issued, passed, taken, settled or done in the form adopted if this

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

Act had been in force at the time, they shall have power, by order made at any time within one year from the commencement of this Act, to cancel or to modify in such manner as may be specified in the order, the said rule, notification, certificate, order, decision, proceeding, action, scheme or thing, and thereupon, the same shall stand cancelled or modified as directed in the said order, with effect from the date on which it was made or from such later date as may be specified therein :

Provided that before making any such order, the Government shall publish in the *Fort St. George Gazette* a notice of their intention to do so, fix a period which shall not be less than two months from the date of the publication of the notice for the persons affected by the order to show cause against the making thereof and consider their representations, if any ;

(*c*) a notification published in respect of any religious institution under section 65-A, sub-section (3) or sub-section (5), of the said Act and in force immediately before the commencement of this Act shall be deemed to be a notification published under section 64 of this Act and shall be in force for five years from the commencement of this Act ;

Explanation.—The scheme of administration, if any, settled for the religious institution and the rules, if any, framed under such scheme which ceased to apply to the institution under section 65-B of the said Act shall not be deemed to be revived by reason of the cancellation of the notification under section 64, sub-section (4), or by reason of its having ceased to be in force by efflux of time.

(*d*) all schemes settled or modified by a Court of law under the said Act or under section 92 of the Code of Civil Procedure, 1908, shall be deemed to have been settled or modified by the Court under this Act and shall have effect accordingly ;

(*e*) in any schemes settled or deemed to have been settled under the said Act (including a scheme settled under section 92 of the

CENTRAL LIBRARY

Code of Civil Procedure, 1908) and in force immediately before the commencement of this Act—

(i) all powers conferred and all duties imposed by such scheme on one or more trustees, whether hereditary or non-hereditary, shall be exercised, subject to the restrictions and conditions, if any, specified in the scheme by the trustee or trustees appointed for the religious institution under this Act ;

(ii) all powers conferred and all duties imposed by such scheme on any Court or Judge or any other person or body of persons not being a trustee or trustees or a paid or an honorary officer or servant of the religious institution, shall be deemed to have been conferred or imposed on the Area Committee if the institution is subject to the jurisdiction of such a Committee and on the Commissioner, in other cases ; and the Area Committee or the Commissioner, as the case may be, shall exercise such powers and discharge such duties in accordance with the provisions of the scheme subject to such restrictions and conditions, if any, specified in the scheme ;

(*f*) all orders made under section 67 of the said Act shall, notwithstanding that they are inconsistent with this Act, continue in force, but any such order may at any time be modified or cancelled by the Deputy Commissioner if it is an order made under sub-section (1) or sub-section (3) of that section and by the Commissioner if it is an order made under sub-section (4) or sub-section (5) of that section ; and any person aggrieved by any modification or cancellation made by the Deputy Commissioner may appeal to the Commissioner within such time as may be prescribed ;

(*g*) all by-laws made by the Board under the said Act shall, in so far as they are not

CENTRAL LIBRARY

inconsistent with this Act, be deemed to be orders issued by the Commissioner under this Act ;

(*h*) all proceedings pending before the Government or the Board or its President or an Assistant Commissioner under the provisions of the said Act at the commencement of this Act, may, in so far as they are not inconsistent with the provisions of this Act, be continued by the appropriate authority under this Act ;

(*i*) all costs, expenses, charges, penalties, and contributions payable to the Board under the said Act immediately before the commencement of this Act, shall be payable to the Government instead, and any assessment, levy or demand of such sums made before the commencement of this Act shall be deemed to be valid and may be continued and shall be enforceable under this Act ;

(*j*) all suits, applications or proceedings taken by, or on behalf of, or against, the Board under the provisions of the said Act and pending at the commencement of this Act, may be continued by, or on behalf of, or against, the Commissioner subject to the provisions of, and in so far as they are not inconsistent with, this Act ;

Explanation.—All suits and applications instituted under the said Act in the High Court in respect of religious institutions situated within the presidency-town and pending on the date of the commencement of this Act, which would have been instituted in the Madras City Civil Court if this Act had been in force at the time when such suit or applications were instituted shall be continued in, and disposed of by, the High Court.

(*k*) any remedy by way of application, suit, or appeal which is provided by this Act shall be available in respect of proceedings under the said Act pending at the commencement of this Act as if the proceedings in respect of which the remedy is sought had been instituted under this Act.

CENTRAL LIBRARY

Position of the president, Commissioners, etc., of Board after commencement of this Act.

104. (1) On the coming into force of this Act, such members of the Board including the President and such of its subordinates as the Government may consider suitable, may be appointed by the Government in their discretion to any offices provided for in this Act to which they may be deemed qualified ; and the services of the rest shall be deemed to have been terminated.

(2) The conditions of service of persons so appointed shall be regulated by rules made by the Government from time to time as if they had entered the service of the Government on the date of their first entertainment as a member of the Board or as its subordinate, as the case may be.

(3) To those not so appointed, the Government may accord such relief by way of pension, gratuity, provident fund or leave with allowances as they may in their discretion deem fit.

(4) No Court shall entertain any suit or application for damages or compensation by any member of the Board or any of its subordinates affected by sub-section (1) or for the variation of the relief, if any, granted under sub-section (3).

Effect of repeal of Tirumalai-Tirupati Devasthanams Act, 1932.

105. (1) Notwithstanding the repeal of the Tirumalai-Tirupati Devasthanams Act, 1932 (hereinafter referred to as the Devasthanams Act)—

(*a*) all rules or by-laws made, notifications issued, orders passed, decisions made, proceedings or action taken and things done by the Government, the Board or the Committee constituted under Chapter II of the Devasthanams Act or the Commissioner appointed under section 18 of that Act or by any of the Advisory Councils appointed under that Act, shall, in so far as they are not inconsistent with this Act be deemed to have been made, issued, passed, taken or done by the appropriate authority under the corresponding provisions of this Act and shall have effect accordingly ;

(*b*) all proceedings pending before the Government, the Board, the Committee or the Commissioner under the provisions of the Devasthanams Act at the commencement of this Act may, in so far as they are not

CENTRAL LIBRARY

inconsistent with the provisions of this Act, be continued by the appropriate authority under this Act ;

(*c*) all suits, applications or proceedings taken by, or on behalf of, or against, the Committee or the Commissioner under the provisions of the Devasthanams Act may be continued by, or on behalf of, or against, the Board of Trustees or the executive officer, as the case may be, of the Devasthanams, subject to the provisions of, and in so far as they are not inconsistent with this Act ;

(*d*) any remedy by way of application or appeal which is provided by this Act shall be available in respect of proceedings under the Devasthanams Act pending at the commencement of this Act as if the proceedings in respect of which the remedy is sought had been instituted under this Act.

(2) Any reference to the Committee, constituted under the Devasthanams Act or the Commissioner appointed under that Act, in any enactment in force in the State of Madras or in any notification, order, rule, form or by-law made under any such enactment and in force in the State, shall, on and from the commencement of this Act, be construed as a reference to the Board of Trustees or the executive officer of the Devasthanams under this Act.

(3) The undertaking by the Tirumalai-Tirupati Devasthanams Committee constituted under the Devasthanams Act, of the functions of a licensee under the Tirumalai-Tirupati Devasthanams Electrical Licence, 1932, shall be deemed to have been authorized by the Government within the meaning of clause (x) of section 85 of this Act and all expenditure incurred from the funds of the Devasthanams before the commencement of this Act for the performance of such functions is hereby validated.

Power to remove difficulties.

106. If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion may require, by order, do anything which appears to them necessary for the purpose of removing the difficulty.

CENTRAL LIBRARY

SCHEDULE I.

[*See* section 90.]

Court-fees payable for documents.

Section	*Description of document.*	*Proper fee.*
(1)	(2)	(3)
	I. Suits.	Rs.
52	Suit for removal of trustee of math or specific endowment attached to math. ..	50
62	Suit against order of the Commissioner ..	50
	II. Applications to Court.	
62 (3) (*a*)	Application to Court to modify or cancel a scheme settled or modified or deemed to have been settled or modified by the Court.	50
74 (5)	Application to Court against order of surcharge	20
87	Application for delivery of possession ..	2
	III. Appeals to Court.	
62 (2) 62 (3) (*b*)	Appeal to High Court	50
	IV. Applications to Government, Commissioner or Deputy Commissioner.	
18	Application to Commissioner for revision ..	10
32 (1)	Application by trustee for recovery from person in possession of property of specific endowment.	2
32 (2)	Application by person in such possession for recovery from person responsible in law for performance of service or charity. ..	2
52 (1)	Application to Commissioner for consent to suit for removal of trustee of math or specific endowment attached to math. ..	10
57	Application for decision of dispute or matter under the section.	15
58 (1)	Application for settlement of scheme ..	50
58 (6)	Application to modify or cancel scheme settled under section 58 (1) or deemed to have been so settled. ..	25
59 (1)	Application for order under the section ..	25

CENTRAL LIBRARY

Section. (1)	*Description of document.* (2)	*Proper fee.* (3) Rs.
59 (2)	Application to modify or cancel order passed under section 59 (1) or deemed to have been so passed.	25
61 (2)	Application to Commissioner to modify or cancel order passed under section 61 (1) or deemed to have been so passed. ..	25
64 (4)	Application to Government to modify or cancel notification of religious institution under Chapter VI.	25
99	Application to Government for revision ..	25
103 (*f*)	Application for modification or cancellation of order under section 67 of the Madras Hindu Religious Endowments Act, 1926. ..	25
	V. Appeals to Government, Commissioner, Deputy Commissioner or trustee.	
19 (5)	Appeal to Government against order of Commissioner	20
29 (4)	Appeal to Government against order of Commissioner regarding alienation of property.	15
31 (2)	Appeal to Commissioner under the section. ..	25
32 (3)	Appeal to Commissioner against order of Deputy Commissioner directing recovery under section 32 (1) or (2). ..	5
45 (5)	Appeal to Commissioner by trustee against order of punishment passed by Deputy Commissioner.	25
	Appeal to Government against order of punishment passed by Commissioner. ..	25
46 (4)	Appeal to Commissioner against order of Deputy Commissioner under section 46 (2) or (3).	25
47 (4)	Appeal to Commissioner against order of Deputy Commissioner appointing temporary successor to hereditary trustee. ..	25
48 (4)	Appeal to Deputy Commissioner against order of trustee under section 48 (3). ..	2
49 (2)	Appeal to Deputy Commissioner by office-holder or servant against order of punishment passed by a trustee.	2

CENTRAL LIBRARY

Section. (1)	*Description of document.* (2)	*Proper fee.* (3) Rs.
49 (3)	Appeal to Commissioner by hereditary office-holder or servant against appellate order of Deputy Commissioner.	2
51 (4)	Appeal to Deputy Commissioner against order of Area Committee regarding *dittam*.	20
52 (2)	Appeal to Government against Commissioner's refusal to give consent. ..	20
61 (1)	Appeal to Commissioner against order of Deputy Commissioner under Chapter V.	25
70 (4)	Appeal to Deputy Commissioner against order of Area Committee regarding budget.	10
74 (5)	Appeal to Government against order of surcharge ..	20
83 (2)	Appeal to the Board of Trustees by office holder or servant against order of punishment by executive officer. ..	2
83 (3)	Appeal to Commissioner by office-holder or servant against appellate order of the Board of Trustees. ..	2
103 (*f*)	Appeal to Commissioner under the section ..	25

SCHEDULE II.

[*See* section 6 (18.)]

List of Tirumalai-Tirupati Devasthanams.

I. The temple of Sri Venkateswaraswami on Tirumalai Hill with the sub-temples of—

(1) Sri Varahaswami.
(2) „ Bhashyakarlu No. 1 (within the pagoda).
(3) „ Bedi-Hanumantharayaswami.
(4) Sri Kshetrapalaka.
(5) „ Dova Bhashyakarlu, and
(6) „ Anjaneyaswami (in front of Sri Varahaswami).

II. The temple of Sri Govindarajaswami at Tirupati with the sub-temples of—

(1) Sri Saley Nacharamma.
(2) „ Choodikodutta Nacharamma,
(3) „ Modal Alwar,
(4) „ Chakrath Alwar,
(5) „ Madhurakavi Alwar,
(6) „ Anjaneyaswami (near Dhwajasthambam),

CENTRAL LIBRARY

(7) ,, Anjaneyaswami (near Pedda Bugga).
(8) Sri Manavala Mahamuni,
(9) ,, Nammalwar,
(10) ,, Vedanta Desikulu.
(11) ,, Woolu Alwar.
(12) ,, Tirumala Nambi;
(13) ,, Tirumangai Alwar,
(14) ,, Bhashyakarlu No. II.
(15) ,, Kurath Alwar, and
(16) ,, Sanjeevaroyaswami.

III. The temple of Sri Kothandaramaswami at Tirupati.

IV. The temple of Sri Kapileswaraswami at Tirupati.

V. Sri Padmavathi's temple at Tiruchanur with the sub-temples of—

(1) Sri Krishnaswami,
(2) ,, Suryanarayanaswami, and
(3) ,, Sundararajaswami.

VI. Any other minor temple attached to any of the above temples and not specially mentioned above.

[*See* section 6 (18)]

SCHEDULE III.

List of educational institutions maintained from the funds of the Tirumalai-Tirupati Devasthanams.

(1) Devasthanam Hindu High School, Tirupati.
(2) Sri Mahant Devasthanam Hindu High School, Vellore.
(3) Sri Venkateswara Vedapatasala, Tirupati.
(4) Sri Venkateswara Ayurvedic College, Tirupati.
(5) Sri Venkateswara Sanskrit College, Tirupati.
(6) Sri Venkateswara Arts College, Tirupati.
(7) The Oriental Institute, Tirupati.

CENTRAL LIBRARY

INDEX

ACTS

Administration of Estates Act 1925 (15 Geo. V. ch. 23), 393
Bengal Tenancy Act (Act VIII of 1885), 174
Board of Education Act 1899 (62-63 Vict. ch. 33), 394
Castes Disabilities Removal Act (Act XXI of 1950), 226
Central Provinces Religious and Charitable Trusts Act 1937, 51
Chantries Act of Edward VI, 57
Charitable Endowment Act (Act VI of 1890), 50, 65, 406
Charitable and Religious Trust Act (Act XIV of 1920), 51, 65, 191, 406, 407, 408, 409
Charitable and Religious Trust (Amendment) Act (XLI of 1923), 53
Civil Procedure Code (Act V of 1908), 50, 120, 230, 241, 251, 264, 266, 269, 270, 274, 370, 408, 409
English Trusts Act (Trustees Act) (XV Geo. V. ch. 19), 276
Evidence Act (Act I of 1872), 174, 175
Guardian and Wards Act (Act VIII of 1890), 301
Hindu Disposition of Property Act (Act XV of 1916), 138, 217
Hindu Wills Act (Act XXI of 1870), 137
Indian Income Tax Act of 1922) (Act XI of 1922), 66
Indian Registration Act (Act XVI of 1908), 102
Indian Succession Act 1865 (Act X of 1865), 66, 137, 138, 141
Indian Trusts Act (Act II of 1862), 48, 99, 272, 201
Law of Property Act 1925 (15-16 Geo. V. ch. 20), 97, 141, 147
Limitation Act (Act IX of 1908), 202, 259, 303, 304, 305, 306, 307, 308, 313, 314, 343, 367, 368, 369, 381, 383
Madras Act I of 1914 (Hindu Transfers and Bequests Act), 138
Madras Act VIII of 1921 (Hindu Transfers and Bequests Act, City of Madras), 138

ACTS—*Contd.*

Madras Hindu Religious Endowment Act (Act III of 1927), 51, 191
Mortmain and Charitable Uses Act 1888 and 1891, 5, 54, 97, 98
Orissa Hindu Religious Endowment Act, 1939 (Orissa Act IV of 1939), 51, 191
Presidency Towns Insolvency Act (Act III of 1909), 146
Provincial Insolvency Act (Act V of 1920), 146
Religious Endowments Act (Act XX of 1893), 50, 190, 399, 400, 401, 403, 404

ADDITIONAL ENDOWMENTS :
—an accretion to debutter, 211, 215
—conditions attached to
—effect of, 214
—election to accept as part of
—how far affects terms of original grant, 214
—position of a shebait appointed in an, 213
—power to appoint new shebait for, 212

ADHINAM :
—a seat of Chief Ascetic of a religious association, 325

ADVOCATE GENERAL :
—consent of
—in suits under Section 92, C. P. C.
—a condition precedent, 440
—fresh consent, when necessary, 441

ADVERSE POSSESSION :
—title to office of shebait by, 314

ADVERSE TITLE :
—assertion by shebait of, 309

ALIENATION :
—by lease
—if permissible, 285
—by Mohunt, 378
—by permanent lease
—if justifiable, 286, 287
—if validated by custom, 288
—if void or voidable, 290
—by shebait—powers of, 283

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

ALIENATION :—*Contd.*
—legal consequences of, 380
—legal necessity for
—onus, 299, 381
—presumptions in, 299, 300
—necessity justifying, 280, 283
—of debutter, by sale, 295, 296
—partial justification for
—effect of, 299
—tests to determine validity of, 285
—unauthorised, a suit to set aside
—limitation for, 303, 381
—when binding upon succeeding shebait, 289
—with leave of court
—legal effect of, 301, 302
—without legal necessity, validity of, 379

ALIENEE :
possession of
—when adverse to the endowment, 305
—to prove legal necessity for alienation, 299

ANNASATRAS :
—a charitable object, 75

ARCHAKA :
—a name for priest, 198
—appointment of, 198
—as hereditary priest in public temples, 220
—degraded, social position of
—among Hindus, 220
—duties and functions of, 198
—females competent to inherit office of, 222
—females disqualified from performing duties of, 221
—status and rights of, 19

ARPANNAMA :
—by itself not a proof of bonafide dedication, 167

ASCETIC :
—ceremonies for initiation of, 330, 332
—if can acquire and hold properties, 333
—succession to after acquired property of, 234
—sudra
—succession to property of, 336
—vairagees if, 335

BAIRAGEES :
—if ascetic in proper sense, 335

BALLAVACHARYA :
—sect of Vaishnabs, 324

BRAHMINS :
—feeding of
—a charitable object, 75

BUDDHISM :
—charitable works in, 25
—concept of God in, 25
—image worship in, 25
—period of, 21

BURDEN OF PROOF :
—in suits to set aside transfers of debutter property, 299

CEREMONIES :
—connected with pratistha or consecretion of image, 156
—evidentiary value of, performance of, 162
—performance of, mode of, in consecration of idols, 157
—prescribed for building and construction of temple, 154
—presumption of due performance of, 157
—Vastu Jaga, Vastu Debata, Vastu Purusha, 155

CHAITANYA :
—founder of a system of Vaishnabism, 324

CHARITY :
—and religion, 4
—by a Hindu widow, extent of, 90
—classes of, in English Law, 54, 264
—distinction between public and private, 55
—foundations of, 54, 58
—if subject to Rule of Prepetuity, 135
—meaning of, 4, 52
—in English Law, 4, 53
—purposes of, 54, 119

CHARITABLE ENDOWMENTS :
—(See also Religious and Charitable Endowments)
—governing principles of in English Law, 55
—types of, in Roman Law, 11

CHARITABLE OBJECT :
—Dharamsalas, Sadabrata, Annasatras, 75
—excavations of tanks and wells, 76
—feeding of Brahmins, 75
—hospitals and educational institutions, 80
—Sradh, 73

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

CHARITABLE TRUST :
—breaches of
—remedies for, in English Law, 392
—control of
—history of, 395-396
—disposition for
—rules for construction of, 123
—gift of tanks and wells, presumption of public character, 78
—if can be avoided
—on bankruptcy of the settlor, 146
—if fails
—where amount not mentioned, 107
—meaning of religious and, 4
—private or public, distinction not recognised in Hindu Law, 71
—rules of English Law of construction not applicable, 110
—uncertainty of the subject matter of, consequence of, 107
—where defeats or delays creditors, 147

CHARITABLE WORKS :
—in Buddhist period, 25

CIVIL PROCEDURE CODE :
Section 92—
if applies to trust both public and private, 421
object and Scope of, 411
reliefs in Suits under—
—by allocation to particular object, 452
—by appointment of new trustee, 446
—by direction to accounts, 449-452
—by removal of trustee, 441, 443-445
Suits under—
—alienee if a proper—party in, 425, 426, 459
—Conditions to be fulfilled in, 412-424, 440
—consent of the Advocate-General, in 440
—costs in, 458
—*Cypres* doctrine —if applies in, 455

CIVIL PROCEDURE CODE— *Contd.*
Section 92—
Reliefs in suits under—
—decisions in, if *res judicata*, 458
—limited to reliefs provided, 429
—of representative character, 431
—persons interested, who are, to institute, 436, 439
—stranger, if can be made party in, 424

COMPETENCY :
—of settlor to create trust, 85-96

COMPLETED DEDICATION :
—subsequent contrary dealing
—if affects character of, 196

CREDITOR :
—rights of
—against Mutt property, 373
—suits by
—form of decree in—against endowed property, 293

CUSTOM :
—of alienation of shebaitship
—how far valid in law, 240
—must not offend policy of Hindu Law, 240

CYPRES :
—doctrine of—applicability of—
—choice of objects must be akin, 126
—in conditional gifts when condition not fulfilled, 127, 131
—in surplus funds, 125, 196
—where intended object can not be given effect to, 124, 131
—where no general intention to charity expressed, 124

CENTRAL LIBRARY

CYPRES—*Contd.*
English Law—meaning of, 123
—if can be applied in suits under section 92, C.P.C. 455
—principles of application of, 124, 125

DASNAMI :
Order of Sannyasis of Sankar's School, 320

DAYABHAGA :
—Power to create trust under, 87

DEBUTTER :
—absolute or partial, 176
—changing into secular by consensus of opinion—if a settled law, 194
—donee to be in existence, 162
—essential idea in the conception of, 161
—existence of, only when property dedicated, 150
—framing of a scheme by suit in private debutter, 464
—gifts to heir not *qua* shebait, if indicates, 181
—legal consequences of public and private, 190, 191
—mere description as
—does not create a, 172
—nature of
—real and nominal, 167
—partial—directions for accumulation, if indicates, 181
—partition of—property for enjoyment—if changes into secular, 195
—permanent lease of
—if void or voidable, 290
—private
—if can be changed into secular
—by family members, 192, 193
—by sebait, 194
—in favour of deity
—particulars of, 166
—private or family
—suits in re, 461-462
—proof of, 169
—recovery of
—wrongfully alienated, 463
—relief in suit for, 462-465
—who can sue for, 461-462
—property—mortgage of—validity of, 291
—Rubkaries or decisions in resumption proceedings—evidentiary value of, 173

DEBUTTER—*Contd.*
—settlement records—how far relevant in proof of, 174
—tests of distinction between private and public, 185
—tests—material in law—to determine, 186

DECREE :
Comprise—by mohunt—how far effective, 370
—by shebait—how far effective, 273

DEDICATED PROPERTY :
—(See also Dedication)
—in partial debutter, 176, 179
—person in control and possession of, is a trustee, 48
—vests in idol, as a juristic person, 45

DEDICATION :
—by unregistered deed, 102
—by will
—mode of dealing during lifetime, if relevant to determine character of, 106
mode of dealing by manager, after testator's death, if reflects upon intention, 107
—ceremonies of, not always material, 103
—different formulæ of, 36
—of dharamsalas, 38
—of mutts, 37
—of tanks and gardens, 37
—of temples, 38
—essentials of, for religious and charitable purpose, 36
—express words or writings, if necessary to create, 161
—formalities of—performance of, if essential to prove, 161
—if incomplete, where remuneration to shebait provided, 181
—intention of donor, a test of, 103, 104
—modes of, 100
—not a sacrament but a secular act, 103
—ownership
—of tanks and trees after, 47
—in, where congregation is a specific donee,39
—in, where no specific donee, 41
—in, where donee is an idol, 45
—partial—effect on title to property, 176, 179

CENTRAL LIBRARY

DEDICATION—*contd.*
—to non existent idol, validity of, 163
—vesting of property after, 39
—without written instrument, 101
DEED :
—to create dedication, if necessary, 101
DEITY :
—as a juristic person, 265
—change of location for worship of, 247
—conception of—as a living being, 158
—defiled—reconstruction of the, 158
—guardian *adlitem* of, 266, 267
—if necessary party in all suits relating to debutter, 270
—independent right of, 257
—is owner of dedicated property in secondary sense, 45
—must be named, 166
—offerings to—an income of 248, 249
—representation of
—in suits,
—a technical matter, 261
—by all shebaits together, 253
—where some shebaits unwilling to join, 254
—order of court for
—if necessary, 268, 269
—suits by
—through persons other than shebaits, 261, 262
—through defacto shebait, 271
DHARAM :
—Gift to—if connotes, Istha and Purtta, 117
—if uncertain, 115
—Hindu concept of, 117
DHARMASALAS :
—a charitable object, 75
—meaning of, 38
EDUCATIONAL INSTITUTION :
—a charitable object, 80
ENDOWED PROPERTY :
—sale of
—for debt, binding on, 294
—entire, when void, 296
—in money decree, 297
—in mortgage decree, 297
ENDOWED PROPERTY—*Contd.*
—sale of
—without legal necessity, if void, 295
ENDOWMENTS :
—(See religious and charitable endowments)
—alienation of entire, if valid, 280
—control of—history of, 395-400
—creation of—by an instrument of trust—if necessary, 99
—deity must be named, 166
—direction to trustee must be imperative, 107
—direction to trustee—effect of, 107
—donee must be in existence, 162
—express words or writings—if necessary, 161
—in the name Thakur or God
—if void for uncertainty, 166
—legal ideas underlying, in Hindu Law, 33
—position of administrator and manager of, 47
—principles of Hindu secular gifts—if applicable to 165
—public special legislations for, 190
—reservation of moderate portion of income, if invalidates, 171
—Sankalpa and Samarpan as evidence of renouncement, 162
—subsequent act and conduct
—if relevant to determine original intention to create, 168, 184
—to debutter—bonafide tests of, 168
—trust, abuse of—if affects validity of, 168
—unspecified deity, in favour of—if void for uncertainty, 122
ENGLISH LAW :
—classes of charity in, 54-64—
—charities which are not recognised in, 55, 57
—definition of trust, by early and modern writers in, 6
—educational gifts, under, 56
—formalities of valid trust under, 97
—gifts, for religion under 56, 58
—gifts for celebration of masses, under, 57

CENTRAL LIBRARY

ENGLISH LAW—*Contd.*
—gifts for propogation of doctrines when charitable according to, 62
—gifts not considered charitable in, 61
—gift to specific individuals not charitable under, 55
—gift to the poor when charitable under, 55
—governing principles of charitable endowment in, 55
—meaning of charity in, 4, 53
—Mortmain Acts, 97
—objects of charitable trust, 110
—essential pre requisites of, 97
—rule of *ejusdem generis*, 112
—rules of—for determining definiteness of the religious and charitable trusts, 110
—statute of Elizabeth, 54
—technical rules of construction in—not applicable in India, 113
—trusts, for benefits of animals under, 61
—trust—foundation of the concept in, 7

EVIDENCE :
—entries in settlement records as of debutter, 174
—intention of settlor as, 184
—nature of—admissible to prove dedication, 175
—purchase of property in name of deity—not *per se*—of dedication, 175
—rubkaries as—of dedication, 173

EXISTING NECESSITY :
—justifying alienation of debutter properties—meaning of, 291

FEMALE :
—competency of, to create trust, 90, 91, 96
—disqualified from performing duties of archaka, 221
—right of—heir to succeed to shebaitship, 217

FORMALITIES :
—of
a valid trust
—under English Law, 97
—gift in ancient time, 23
—religious endowment, 103
—under Hindu Law for creation of a trust, 99

GIFT :
—and dedication—distinction of, 41

GIFT—*Contd.*
—effect of—where one of the several alternative objects uncertain, 119
—for
—benefit of specific individual, 55
—celebration of masses, 57
—dharam, 115
—promotion of education, 56
—relief of poverty, 56
—religion, 56
—religious and charitable purpose, 65
—superstitious uses, 57, 67
—to
—brahmins and pundits, 74
—deity or religious purposes, 41
—idols, 71
—samadhi or tombs, 72
—the poor, 114
—virtuous and good works, 118
—when present devise not charitable, 113
—when void for uncertainty, 113

GOD :
—worship of—in Buddhist religion, 25
—in Hindu religion, 28, 29

HINDU LAW :
—creation of trust under, 99
—early texts of, as to endowment, 2
—English Law of superstitious uses not applicable to, 67
—no distinction between public and private charities under, 71
—on religious and charitable trust, primarily judge made 3
—religion and charity not distinguished in, 14
—religious and charitable purposes in, 65
—rule against perpetuity, not applicable to charitable trust under, 65, 66
—sources of—as to endowments, 3
—validity of gift to idols under, 71

HINDU RELIGION :
—idea of God in, 28, 29

CENTRAL LIBRARY

HINDU WOMEN'S RIGHT TO PROPERTY ACT :
—application of—in devolution of shebaity rights, 217
HOSPITAL :
—gift for, 80
IDOL :
—a juristic entity, 160
—consecration of—introduction of, 154
—custody of, 246
—daily worship of, 158
—destruction of—does not extinguish religious trust, 159
—gifts to—in Hindu Law, 71
—juristic personality in—what is, 158
—mere establishment of—does not create debutter, 159
—nature of personality of, 161
—necessity and benefit to—what it means, 280, 281
—necessity of—justifying alienation, 283
—not a perpetual infant, 258
—offerings to—ownership in—(See offerings)
—power of—suing and being sued by, 160
—purification of defiled, 158
—reconstruction of—destroyed or damaged, 158
—represents supreme God in all forms of worship, 154
—vesting of property in,
—in ideal sense, 161
—in, as juristic person, 45
—worship of
—amongst Hindus, 30
—Buddhists, 25
—history and origin in Hindu religion, 25, 26
—in Pouranic Age, 152
—sources of, in Hindu religion, 154
IMAGES :
—consecration of, 156
—description of, 155
—kinds of, 155, 156
INCOME :
—directions for accumulation of—validity of, 141
—directions for accumulations not *per se* illegal in trusts, 142
—limits within which accumulations of—permissible, 145
—rule against accumulation of —not applicable to transfers for religious and charitable purpose, 145
—rule of English Law as to accumulation of, when permissible, 145
INCOME—*Contd.*
—statutory restrictions on accumulation of, 145
INCOME-TAX ACT :
—not applicable to charitable and religious trusts, 66
INSANITY :
—of shebait, effect of, 225
ISTHA AND PURTTA :
—meaning of, 12
—what are, 13, 14
JURISTIC PERSONALITY :
—in idol—what is, 158, 160
KARTA :
—of joint family—competency to create trust, 88, 89
KATTALAI :
—a special kind of endowment in South India, 195
LEGAL NECESSITY :
—alienation without—effect of
—by a Shebait, 280
—by a Mohunt, 375
—presumption of, 383
—what is, 375-377
LEGISLATION :
—on subjects of religious and charitable trusts, 49-51
LIMITATION :
—for suits to set aside unauthorized alienation, 303-308
LUNACY :
—of Mohunt, effect of, 223
—of Shebait, effect of, 225
—when a disqualification to succeed to shebaitship, 223
MADHAWACHARYA :
—a Vaishnab saint—Mutts of, 29, 323
MAHAPRAVU :
—See Sree Chaitanya, 29, 324
MOHUNT :
—appointment of a successor
—by, 349, 350
—right of, if can be delegated, 352
—who can be appointed, 354
—when invalid, 351
—compromise by—how far effective, 370
—confirmation of appointment of
—by brotherhood, if necessary, 354
—decree against—form of, 293-395

CENTRAL LIBRARY

MOHUNT—*Cotnd.*
—de facto
—if can appoint his successor, 353
—if can sue, 368
—duties of, 362
—to render accounts, 364, 383
—invalid appointment of, 351
—judgment against—if binds his successor, 369
—lease by, 378
—legal status of, 339-342
—liability of—to account, 364, 383
—neither a life-tenant nor a corporation sole, 365
—office of—if partible, 359
—personal heirs of, 357
—personal property of—succession to, 358
—power of
—to alienate, 374
—to borrow money, 371
—to grant lease, 378
—removal of, 386
—renunciation of office by, 384
—rights of
—against Mutt property—for debt—when enforceable, 373
—enforcement of—by a creditor—when permissible, 373
—extent of—in respect of endowed property, 362-365
—if can be delegated, 362
—to nominate successor—a personal right, 353
—to possess and manage mutt property, 362
—to sue and being sued, 366-367
—to surplus income, 366
—subsequent disbility—effect of, 384
—succession to the office of a, 344
—what is—a head of a mutt, 326
—who can be appointed, a, 354

MOHUNTSHIP :
—if a property, 343
—if transferable, 361
—succession to—on death of or resignation of a Mohunt, 355

MONASTERIES :
—absence of—in Vedic age, 16
—introduction in Hindu system, 28

MONASTIC INSTITUTIONS :
—ceremonies for entry into, 330, 331
—origin of—in India, 318

MONASTICISM :
—in Vedic Age, 18
—rise and history of, 22

MONKS :
—classes or orders of, 320
—ordained by Sankaracharya, 320

MORTMAIN ACTS :
—not applicable in India, 98

MUTT :
—a centre of theological learning, 28
—and debutter—distinguished, 326
—benefit and legal necessity of a, 375-377
—ceremonies of initiation for entry into, 330
—classes of
—hakimi, 357
—mourashi, 346
—panchayati, 356
—private and public, 388
—dedication of—different forms of, 37
—entry into—probationary period before, 331
—establishment of—by Sankaracharya and his followers, 27, 320-325
—idol—not an essential element in, 326, 328
—juridical person, 1, 388, 366
—meaning of, 317
—of Sankaracharya, 28
—origin of, 336-337
—property of
—in whom vests, 338
rights of management and possession in Mohunt, 362
—sale and permanent lease of—validity of, 379
—succession to subordinate, 358
—Sudra—origin of, 325
—suits
—by persons interested in, 369
—for recovery of properties—
limitation for, 381
—onus of proof in, 381

NIMBARKA :
—a sect of Vaishnavs, 324

CENTRAL LIBRARY

OFFERING :
—to archakas
—ownership of—if in the deity, 252
—to deity
—of perishable nature, 250
—of permanent nature, 250
—ownership of, 249
—to idol
—set up for temporary worship, 250
—usages as to—ownership of, 250-251

PALAS :
—if transferable, 239-241
—liability for attachment and sale, 241

PANCHAYETDAR :
—a name for shebait in Tanjore, 197

PANDARA SANNADHI :
—Sudra head of an adhinam, 325

PARDESHI :
—Sudra Sannyasi, 325

PARTITION :
—of place of worship, 242
—of shebaiti right, 241

PERPETUITY :
—rule against—application of
—in case of charitable trusts in India, 65
—in cases of gift in favour of idol, 139
—rule of—application of—in partial dedications, 140
—in private trust of non-religious character, 140
—as understood in English Law, 134
—exemption from, when can be claimed, 139
—Hindu and English concept of, difference in, 137
—in early Hindu Texts, 135
—infringement of, if invalidates a trust, 134-135

PIA CAUSA :
—a subject of legal right under the Roman Law, 11

POURANIC GODS :
—worship of, 152

PRATISTHA :
—rights and observances of, 156

PRATISTHITA :
—a class of image, 155

PRESUMPTION :
—of public character of a gift, 78

PRIEST :
—hereditary, 198
—office of—and of shebait—if can be united, 198
—office of, as distinguished from shebaitship, 198
—right to continue as—if ripens by holding office for generations, 199
—shebait—difference from, 198

PROPATHA :
—meaning of—in Vedic Age, 19

RAMANANDA :
—and his order, 29
—founder of a Vaishnava sect, 323
—mutts by, 323

RAMANUJA :
—and his order, 28
—founder of a Vaishnab sect, 322
—Mutts by, 323

REGULATION :
Bengal, Regulation XIX of 1810, 397
Bombay, Regulation XVII of 1827, 399
Madras, Regulation VII of 1817, 397

RELIGION :
—not distinguished from charity in Hindu concept of Trust, 14

RELIGIOUS AND CHARITABLE ENDOWMENTS :
—administration of
—by courts, 402
—by legislations, 397, 399, 406
—suits for, under Civil Procedure Code, 409-440
—breach of trust, in private,
—remedies for, 460-462
—control of
—by ancient rulers over, 395
—by British Government over, 396
—dedication
—different formulae of, 36
—essentials of, 36
—legal ideas underlying, 33
—popular forms of, among Hindus, 32

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

RELIGIOUS AND CHARITABLE GIFTS :
—earliest Hindu conception of, 12

RELIGIOUS AND CHARITABLE INSTITUTION :
—if a juristic person, 9
—in Buddhist period, 21
—in Vedic Age, 16, 19, 20
—status of, in Roman Law, 9

RELIGIOUS AND CHARITABLE TRUSTS :
—competency of Hindu settlor to create, 85
—creation of, in Hindu Law, 98, 99
—English concept of, 5
—essentials of, 52
—essential pre-requisites of English, 97
—if affected by
—bankruptcy of settlor, 145
—rule of perpetuity, 135
—if can be given a secular turn by consensus of family, 192-195
—in favour of a particular donee, validity of, 185, 192
—meaning of, 4
—Roman concept of, 8-12
—Sources of law, 3
—development of, 3
—materials for, in early Hindu texts, 2
when can be avoided, 147
—when infringes any provision of law, 133

RELIGIOUS OFFICE :
—alienation of
—limitations for, 233-235
—in favour of one in line of succession, 231
—on compromise, if can be recorded, 230
—on footing of custom, 239
—on grounds of necessity or benefit to the deity, 235
—to a co-shebait, 231
—if can be mortgaged or assigned, 228-229

RELIGIOUS PURPOSE :
—consecration of trees and groves, a, in Hindu Law, 79
—dedication for—essentials of, 36
—what is, 4

RES JUDICATA :
—suits under section 92, Civil Procedure Code, if, 457-458

RUBKARIES :
—of resumption proceedings—evidentiary value, 173

SADABRATA :
—a charitable object, 75

SAMARPAN :
—See under 'Utsarga'

SAMPRADAN :
—not conclusive proof of real endowment, 167

SANGHA :
—a juristic person, 24
—genesis of the idea of Corporation, 24

SANGHARAMA :
—Buddhist name for a Mutt or monastery, 22

SANKALPA :
—if an essential part of dedication, 36, 103
—not conclusive proof of real endowment, 167

SANKARACHARYA :
—founder of Hindu Mutts, 320

SANNYASI :
—a Brahmin ascetic, 321
—whether Sudras can become, 321

SAYAMBHU :
—a class of image, 155

SETTLORS :
—See under 'Trust'
—competency and disability of, in Dayabhaga, 87
—females as, 90-96
—in Mitakshara, 87, 88
—Karta of joint family as, 89

SHEBA :
—meaning of, 245

SHEBAIT :
—a human ministrant of deity, 197
—a manager, 199
—act of majority of
—if binds the debutter estate, 253
—if binds the minority, 253
—adverse title, if can assert, 309, 310
—alienation by—without legal necessity, how far effective, 280
—all form one body in the eye of law, 252
—appointment of
—from inferior castes, no bar in law, 216
—unfettered discretion of the founder, 216

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

SHEBAIT—*Contd.*
—decree against, 273
—de facto
—what is, 271-275
—neither a trespasser nor a constructive trustee, 313
—delegation of authority by 274-276
—duties of, 245
—accounting, 312
custody of the idol, 246
—must act jointly, 252
—not to mix up private funds, 312
—reasonable care in management, 247
—when himself an Archaka, 245
—if can profit out of trust property, 310
—legal position of, 199
—mortgage by, 291-293
—must not be disqualified when succession opens, 223
—negligence of—loss due to, 247-248
—not a trustee in English sense, 161, 199
—not an owner of offerings, 249
—office of
—ingredients in the, 245
—termination of
—by death, 314
—by removal by court, 315-316, 462
—by resignation or relinquishment, 314
—by subsequent disability 315
—unchastity, if a ground of, 315
—parties in suits on behalf of deities, 254
—power of
—over additional endowment, 212
—to alienate
—debutter property, 277, 280
—income and corpus, 279
—to alter line of succession to Shebaitship, 211
—to compromise, 273
—remuneration to, if makes dedication incomplete, 181
—rights of
—as limited owner, 200
—custody and possession of debutter estate, 247

SHEBAIT—*Contd.*
—remuneration, 248
—residence in deity's house, 252
—suit, 258, 259
—to nominate successor, 227
—rights of
—to offerings made to deity, 249
—to reimbursement, 312
—to remove idol for worship, 246
—to sue a co-shebait, 262
—subsequent incapacity of, remedies against, 226
—transfer by
—the right to nominate a successor, 227
—of entire endowment, if void, 280

SHEBAITSHIP :
—alienation of
—exception to general rule against, 231
—in favour of one
—in line of succession, 231
—a co-shebait, 231
—limitations for, 233-235
—on grounds of necessity or benefit to deity, 235
—on the footing of custom, 239
—conception of—a blend of office and property, 201
—devolution of
—Hindu Women's Right to Property Act, under 217
—normal, as in any other property, 201, 216
—residuary rights in, 208, 210
—disposition of
—founder's powers,
—limitations for, 202, 203, 209
—in the absence of any direction, remains with the founder and his heirs, 201
—disqualification—mere non-belief in idol worship is not a ground of, 226
—escheat—law of—if applies to, 227

CENTRAL LIBRARY

SHEBAIT-SHIP—*Contd.*
—for a limited period, 205
if, can be acquired by adverse possession, 313,
—inalienability of, in law, 228
—involuntary alienation of, not valid, 230
—lease or mortgage of, if void, 229
—sale of—void, 228
—succession to —
—alteration of line of—reservation of powers by founder, 208- 209
—change of religion, a disqualification by custom, 226
—determined principally by grant, 218
—disqualifications for—by custom, 226
—must exist when succession opens, 223
—founder's heirs, upon, 205
—method of ascertainment as to who are, 205
—line of—change in by additional endowment, 211
—mere non-belief in idol worship, not a disqualification for, 226
—on death of life-shebait, 205, 207
—on extinction of shebait's line, 227
—usage, contrary to general law, of, if prevails in, 218, 219
—women, by, 217

SRADH :
—a charitable object, 73

STATUTES :
—Statute 13 Eliza. ch. 5, 147
—Statute 43 Eliza. ch. 4, 54
—Statute 9 Geo. II ch. 16, 97
—Statute 1 Edw. VI ch. 14, 57
—Statute 23 Hen. VIII ch. 10, (Mortmain), 57
—Statute 9 & 10 Vict. ch. 29, 57

SUCCESSION :
—to mohuntship, 344
—to shebaitship—(See under 'Shebaitship')

SUDRAS :
—if can be Sannyashis, 321, 322
—initiation of, as ascetics, 332
—mutts of, 325

SUITS :
—See under 'Civil Procedure Code'
—for setting aside alienations
—limitations for, 303, 306-308
—burden of proof in, 299
—maintainability of—by persons interested in mutts, 369
—on behalf of deity—by shebait, 254
—right of—persons other than shebait, 262

SUPERSTITIOUS USES :
—Law of—not applicable in India, 67

SURPLUS INCOME :
—application of, doctrine of *cy-pres*, 125, 196

TAMBIRAN :
—a Sudra ascetic attached to an adhinam 325

TANKS :
—excavation of, a charitable object, 76
—presumption of public character of, 78

TEMPLES :
—known during Suttra period 20
—not existent in Vedic age, 16
—private or public—material test of, 186, 187
—presumption from public user, 186, 190
—special test
—in Bengal, 188, 198
—in Madras, 188
—in Malabar, 189

TERMINATION :
—of the office of—mohuntship (see under "Mohunt')
—shebaitship (see under 'Shebaitship)

TRUST :
..bankruptcy of the settlor, how far affects, 145
—breach of, remedies for, 460
—charitable—if can be avoided at the instance of creditors, 147
—concept of
—evolution of, 5
—foundation of in English Law, 7
—constructive
—distinction between English and Indian Laws, 416, 417
—how arises, 414

UNIVERSITY OF CALCUTTA
ADVANCEMENT OF LEARNING
CENTRAL LIBRARY

TRUST—*Contd.*
—definition of
—by early and modern English writers, 6
—in broad and general sense, 7
—of 5
—duty of court in suits under section 92, of the Civil Procedure Code, 421
—for superstitious uses
—not charitable in English Law, 57
—valid in India, 68
—must not infringe the provision of any law, 133
—public, meaning and inferences of, 418
—uncertainty, if fatal to creation of, 107-110

TRUSTEE :
..appointment of a new, 446
—*de son tort*, meaning of, 414
—discharge of—directions for accounts, 449
—liability of, to keep accounts, 403
—removal of—grounds for, 441, 443
—vesting of property in, 449

UNCERTAINTY :
—in essential elements, fatal to creation of a valid trust, 107-110
—of objects—what are, 113-118

URALLEN :
—a name for shebait in Malabar, 197

UTSARGA :
—an essential for dedication, 36
—meaning of, 36

VEDIC AGE :
—charitable institutions in, 19
—divisions of life in, 317
—monastic institutions in, 18
—'Propatha' in, 19
—Temples in, 16, 20
—Worship of idol, in, 16, 151
—nature of, in, 17

VIHAR :
—Buddhist name for a Mutt or Monastery, 22

WELLS :
—a charitable object, 76
—presumption of public character of, 78

WORSHIP :
—in Vedic age, nature and form of, 17
—of idol, unknown in Vedic age, 16
—of image—history and origin of, 25, 26
—place of, if can be partitioned, 242

YATI :
—a Brahmin ascetic, 318